

Statistical Tables and
Explanatory Notes

1906


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PREFACE.

The tables in this volume contain ephemeral matter which it has been found undesirable to include in the text of the *Gazetteer of Sibi*.

Under the orders of the Government of India, the statistics are to be re-compiled and a new edition of this volume brought out after each census.

The volume can also be expanded by adding to it, in the interleaved blank forms, any matter that the district and other officers who use it may require to correct or supplement the text in the A volume. This process is to go on till the Local Government considers revision of the text in the A necessary, when all supplementary text matter, each periodical revision, will be incorporated in time, and volume B will revert to its original statistical appendix.

A MCCONAGHEY, MAJOR.

Lahore, December 1906.

TABLE OF CONTENTS.

Name of section of A volume in which the table is mentioned.	Serial number of tables.	Name of table.	Page
Climate, temperature and rainfall.	I	Rainfall	1
Population	II	Principal census statistics ...	7
	III	Names of principal <i>mullds</i> ...	9
Agriculture	IV	Irrigated and unirrigated areas with sources of irrigation.	10
	V	Cultivable and irrigable area and sources of irrigation during 1904-5.	12
	VI	Details of areas under principal crops.	14
	VII	Advances and recoveries made for the purpose of the Land Improvement and Agriculturists Loans Acts.	17
	VIII	Sibi Horse and Cattle Fair ...	19
	IX	Area irrigated from Desert and Begari canals and the revenue assessed during 24 years ending March 31, 1905.	21
Rents, wages and price.	X	Prices of staples... ..	24
Means of communication.	XI	Principal routes	31
	XII	Travellers' bungalows... ..	52
Judicial	XIII	Civil suits disposed of	58
	XIV	Criminal cases disposed of ...	61
	XV	Number and classification of political cases, tried by <i>Jirgas</i> .	62
	XVI	Registration work	66
Finance	XVII	Revenue receipts from all sources.	70

Name of section of A volume in which the table is mentioned	Serial num- ber of table	Name of table	Page
Land revenue ...	XVIII	Land revenue realized in kind from the principal crops.	74
•	XIX	Land revenue realized in cash and kind.	90
Miscellaneous reve- nue.	XX	Excise revenue	94
Local Funds... ..	XXI	Income and expenditure of local funds.	97
Levies	XXII	Distribution of effective levies.	101
Police	XXIII	Distribution of Police	105
	XXIV	Cognizable crime	108
Education	XXV	Schools on March 31, 1905 ...	110
Medical	XXVI	Dispensaries and average daily attendance of patients.	111

VOLUME B

Statistical Tables and Explanatory Note

TABLE I.—RAINFALL.

PARTICULARS.	STATIONS.			
	Kach (14 years.)	Sháhriq (14 years.)	Bábar Kach (14 years.)	Sibi (15 years.)
1	2	3	4	5
A.—Total average annual rainfall in inches	11·06	11·51	6·09	4·95
B.—Total average rainfall for half- year ending March 31. ...	9·19	5·43	2·25	1·77
C.—Details of average half-yearly rainfall by months—				
October	0·07	0·09	0·02	.. ..
November	0·33	0·13	0·05	0·13
December	1·35	0·61	0·31	0·46
January	2·68	1·54	0·52	0·48
February	2·39	1·45	0·64	0·28
March	2·37	1·61	0·71	0·42
D.—Total average rainfall for half- year ending September 30...	1·87	6·08	3·84	3·18
E.—Details of average half-yearly rainfall by months—				
April	0·85	0·36	0·18	0·09
May	0·35	0·57	0·20	0·26
June	0·24	0·57	0·29	0·28
July	0·28	2·20	1·33	1·26
August	0·07	1·73	1·43	1·05
September	0·08	0·65	0·41	0·24

NOTE 1.—The figures in this table cover various periods ending with 1904.

NOTE 2.—The highland Districts of Baluchistán receive most of their annual rainfall during the winter months, namely, October to March, and the months in this table have been so arranged as to elicit this fact.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE I.—RAINFALL.

PARTICULARS.	KACH.							
	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.
	2	3	4	5	6	7	8	9
A.—Total average annual rainfall in inches								
B.—Total average rainfall for half-year ending March 31.								
C.—Details of average half- yearly rainfall by months—								
October								
November... ..								
December... ..								
January								
February								
March								
D.—Total average rainfall for half-year ending Septem- ber 30								
E.—Details of average half- yearly rainfall by months—								
April								
May								
June								
July... ..								
August								
September... ..								

BALUCHISTAN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE I.—RAINFALL.

PARTICULARS.	SHAHUC.							
	1905.	1906	1907	1908.	1909.	1910	1911	1912.
I	2	3	4	5	6	7	8	9
A.—Total average annual rainfall in inches								
B.—Total average rainfall for half-year ending March 31.								
C.—Details of average half-yearly rainfall by months—								
October								
November								
December								
January								
February								
March								
D.—Total average rainfall for half-year ending September 30								
E.—Details of average half-yearly rainfall by months—								
April								
May								
June								
July								
August								
September								

TABLE I.—RAINFALL.

PARTICULARS.	BARR KACH.							
	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.
1	2	3	4	5	6	7	8	9
A.—Total average annual rainfall in inches			3					
B.—Total average rainfall for half-year ending March 31.								
C.—Details of average half-yearly rainfall by months—								
October								
November... ..								
December... ..								
January								
February								
March								
D.—Total average rainfall for half-year ending September 30								
E.—Details of average half-yearly rainfall by months—								
April								
May								
June								
July								
August								
September								

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE I.—RAINFALL.

PARTICULARS.	Sibi.							
	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.
	2	3	4	5	6	7	8	9
A.—Total average annual rainfall in inches								
B.—Total average rainfall for half-year ending March 31.								
C.—Details of average half-yearly rainfall by months—								
October								
November								
December								
January								
February								
March								
D.—Total average rainfall for half-year ending September 30								
E.—Details of average half-yearly rainfall by months—								
April								
May								
June								
July								
August								
September								

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE I.—RAINFALL.

PARTICULARS.	KOTLA.							
	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.
	2	3	4	5	6	7	8	9
A.—Total average annual rainfall in inches								
B.—Total average rainfall for half-year ending March 31.								
C.—Details of average half-yearly rainfall by months—								
October								
November								
December								
January								
February								
March								
D.—Total average rainfall for half-year ending September 30								
E.—Details of average half-yearly rainfall by months—								
April								
May								
June								
July								
August								
September								

DIVISION.

§ Column 12. "Others" include Sikhs 377, Parsis 14 and Jews 4. * Figures for 1891 are not available. The figures in columns 19 and 23 include those persons only in whose case literacy was recorded in the areas which were censused on the standard schedule. They numbered 79.4 as follows: Sibt tahsil 9699, Sharnag 2185 and Kohlu 40. The population of the Kohlu tahsil excludes the Maris living in that tahsil who are included in the Marri country. They number 662.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District

TABLE III.—NAMES OF PRINCIPAL MULLÁS WITH
TRIBE AND RESIDENCE.

Name.	Residence.	Name.	Residence.
Shahrig Tahsil.		12. <i>Mullá</i> Umíd, son of <i>Mullá</i> Málk Saiad.	Ahmadún.
1. <i>Mullá</i> Lutfulla, son of Abdul Kabir Saiad.	Kowás.	13. <i>Mullá</i> Hamíd, son of <i>Mullá</i> Ghani Saiad.	Kámr.
2. <i>Mullá</i> Hájí Ghafúr, son of Jama Tarín.	„	14. <i>Mullá</i> Nék, son of <i>Mullá</i> Sháh- dád Sárangzai.	Tangi.
3. <i>Mullá</i> Din Mu- hammad, son of Abdul Ra- súl Saiad.	„	15. <i>Mullá</i> Yáhya, son of Bázd Saiad.	Ghund.
4. <i>Hájí</i> <i>Mullá</i> Sultán, son of Saifulla Sár- rangzai.	Ispézandi.	16. <i>Mullá</i> Sittak, son of <i>Mullá</i> Dín Muham- mad Abduláni.	Tarwo.
5. <i>Mullá</i> Sádu, son of Mirza Pánézai.	Gogi.	17. <i>Mullá</i> Táib, son of Hájí Khid- ráni.	Khidrani.
6. <i>Mullá</i> Alíjan, son of Yákúh Sárangzai.	„	18. <i>Mullá</i> Wali, son of Súfi Khamís.	Marpám.
7. Saiad Muham- mad, son of <i>Mullá</i> Abdal Sárangzai.	„	19. <i>Mián</i> Afzal Sháh Saiad.	Mián Kach.
8. <i>Mullá</i> Rahma- tulla, son of <i>Mullá</i> Táj Tá- ran.	„	20. <i>Mullá</i> Hamíd, son of Umar Wanéchi.	Shín Kach.
9. <i>Mullá</i> Yusuf, son of <i>Mullá</i> Yásín Sárang- zai.	Ahmadún.	21. <i>Mullá</i> Madad, son of <i>Mullá</i> Aziz, Wanéchi	Béli.
10. <i>Mullá</i> Salím, son of <i>Mullá</i> Shamsulla Pánézai.	„	22. <i>Mullá</i> Sulai- mán, son of Murád Ali Ab- duláni.	Ambo.
11. <i>Mullá</i> Abdul Náim, son of <i>Mullá</i> Páind Saiad.	„	23. <i>Mullá</i> Sabzal, son of Núr Muhammad Gharshín.	„

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE III.—NAMES OF PRINCIPAL MULLÁS WITH
TRIBE AND RESIDENCE.

Name.	Residence.	Name.	Residence.
24. <i>Mullá</i> Rahmatulla, son of <i>Mullá</i> Páyu Khidrání.	Sháhrig.	4. <i>Mullá</i> Yákúb, son of <i>Mullá</i> Háji Músa Khél.	Sángán.
25. <i>Háji Mullá</i> Latif, son of Wali Saíad.	Basti Sheikh-án.	Kohlu Tahsil.	
26. <i>Mullá</i> Mukím, son of <i>Mullá</i> Abdul Hak Táran.	Sarléza.	1. <i>Háji</i> Muhammad Munír, Andar Ghilzai.	Azád Shahr.
27. Saíad Ali Sháh, son of Karam Sháh Saíad.	Chungi.	2. <i>Mullá</i> Muhammad Jamál Pesháwari.	Khán Muhammad Shahr.
28. <i>Mullá</i> Madak, son of <i>Mullá</i> Khudak Khidrání.	Khidrání.	3. Núr Muhammad, son of Fateh Muhammad Méngal.	Dád Ali Shahr
29. <i>Mullá</i> Din Muhammad, son of <i>Mullá</i> Sulaimán Sarangzai.	Punga.	4. Ali Muhammad, son of Abdur Rahmán Ruz-dár.	Uriáni.
30. <i>Mullá</i> Adris, son of Táju Marézaí Aspáni.	Harnai.	5. <i>Mullá</i> Shakúr, son of Murád Muhammad Tarok.	Mirzihán Shahr.
31. <i>Sheikh</i> Rasúl, son of Sheikh Karím Saíad.	Zarghún.	Nasirabad Tahsil.	
Sibi Tahsil.		1. Saíad Ináyat Sháh, son of Saíad Achban Sháh.	Sháhpur.
1. <i>Qázi</i> Muhammad Usmán, son of <i>Mullá</i> Abdul Hakím Alezaí.	Kurk.	2. <i>Maulvi</i> Ghulám Mustafa, son of Abdul Aziz Kuláchi.	Usta Muhammadpur.
2. <i>Mullá</i> Khuda Bakhsh, son of Abdu Hakím Luni.	Lúni.	3. <i>Maulvi</i> Nabi Bakhsh, son of Abdul Aziz Kuláchi.	"
3. <i>Mullá</i> Muhammad Yákúb, son for Mahmúd Tilgar.	Khajak.	4. <i>Maulvi</i> Abdul Aziz Umráni.	Mánjhipur.
		5. Saíad Abdul Hak, son of Mahmúd Sháh Saíad Bukhári.	Dirgi.

BALUCHISTAN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE IV.—IRRIGATED AND UNIRRIGATED VILLAGES WITH SOURCES OF IRRIGATION ON MARCH 31, 1905.

Name of Tahsil.	Name of Patwari's circle.	Approximate percentage of			Number of revenue villages in each circle.					Permanent sources of irrigation.					
		Irrigated area.	Flood irrigation.	Rain cultivation.	Wholly under permanent irrigation.	Partly under permanent irrigation.	Without permanent irrigation.	Number of villages using flood water.	Total	Government canals and other works.	Streams.	Tanks.	Springs.	Wells.	Total.
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
SIBI DISTRICT.															
1. Shahrig tahsil	77	..	..	198	49	12	39	298	2	20	19	152	28	221
	80	..	20	7	7	1	..	15	..	1	7	25	..	33
1. Kowás	59	..	41	6	6	2	..	15	..	2	4	40	..	46
2. Kach...	92	..	8	30	2	1	..	33	..	4	3	44	..	51
3. Shábrig	92	..	8	28	..	2	..	30	..	3	..	14	5	22
4. Harnai	64	..	36	15	..	3	..	18	..	3	..	21	..	24
5. Bábián	27	2	2	15	46	..	(a) 4	..	1	..	5
	85	..	15	12	..	2	..	14	..	2	..	..	..	2
1. Sangan	98	2	..	9	1	..	..	10	..	1	..	..	..	2
2. Sibi	74	26	..	..	1	..	..	6	..	..	..	..	..	1
3. Khajak	99	1	..	6	..	..	..	6	..	..	..	..	..	1
4. Kurk...	100	..	..	..	..	6	6	..	1	..	..	..	1
5. Tali	997	..	..	..	..	9	9	..	..	..	..	..	1
6. Mall	997	0.3	..	..	..	9	9	..	..	..	..	..	1

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

3. Kohlu tahsil ...	.....	3	97	...	3	7	1	24	35	...	3	5	7	...	15
1. Kote Shahr...	24	76	...	...	...	3	...	19	22	...	1	1	5	...	7
2. Uriani ...	0'3	99'6	0'1	...	3	4	1	5	13	...	2	4	2	...	8
4. Nasirabad tahsil.	.....	90	...	10	82	24	...	...	106	(b) 2	...	...	...	23	25
1. Lahri Dombki.	68	...	...	32	5	2	...	...	7	1	...	...	...	...	1
2. Sanari ...	80	...	...	20	1	4	...	...	5	1	...	...	...	2	3
3. Manjhipur ...	99	...	...	1	4	1	...	...	5	1	...	...	...	1	2
4. Dhāndha ...	72	...	...	28	6	1	...	...	7	1	...	...	...	...	1
5. Sohbatpur ...	100	...	...	...	8	...	...	...	8	1	...	...	...	...	1
6. Nasirabad ...	75	...	...	25	6	9	...	...	15	2	...	...	...	...	4
7. Khānpur ...	98	...	...	2	16	4	...	...	20	1	...	...	...	...	6
8. Muhammadpur.	100	...	...	...	11	...	...	...	11	1	...	...	...	...	7
9. Sirwah ...	99	...	...	1	25	3	...	...	28	1	...	...	...	7	8

(a) The Nári stream irrigates the lands of the Khajak, Kurk and Sibi circles and the flood water of the Talli hill torrent irrigates lands of the Talli and Mall circles.

(b) The Sháhiwah irrigates the circles Nos. 1 to 6 and the Begáhiwah irrigates the circles Nos. 6 to 9.

TABLE V.—CULTIVABLE AND IRRIGABLE AREA AND SOURCES OF IRRIGATION DURING 1904-5.

Name of tahsil.	Name of patwari's circle.	Uncultivated area.			Irrigable area.					Unirrigated area.			
		Total area surveyed (acres).	Cultivable (acres).	Cultivated (acres), but not	Uncultivable (acres).	Cultivable area (acres).	Total acres.	Government canals.	Kárzees.		Springs.	Streams.	Wells.
A. Shahrig tahsil ..													
1. Kowás	40,314	27,053	8,472	18,581	13,261	10,250	...	549	4,963	4,731	7	3,011
2. Kach	8,587	5,992	1,979	4,013	2,595	2,066	...	+12	1,471	183	...	529
3. Shábrig	11,949	8,851	3,899	4,952	3,098	1,831	...	85	1,379	367	...	1,267
4. Harnai	8,017	5,169	1,953	4,116	2,848	2,633	...	52	793	1,788	...	215
5. Bábián	5,837	3,353	823	2,530	2,484	2,284	...	...	979	1,298	7	200
.....	5,924	3,688	712	2,970	2,236	1,436	...	...	341	1,095	...	800
B. Sibi tahsil	249,700	124,462	97,975	26,487	125,238	81,591	...	...	...	81,591	...	43,647
1. Sangan	13,961	9,474	750	8,724	4,487	4,478	...	...	...	4,478	...	9
2. Sibi	45,412	11,666	7,665	4,001	33,746	32,989	...	...	...	32,989	...	757
3. Khajak	45,176	17,223	16,191	1,632	27,953	20,584	...	...	...	20,584	...	7,369
4. Kurk	29,368	5,693	3,835	1,858	23,675	23,540	...	...	...	23,540	...	135
5. Tali	54,495	36,069	27,436	8,633	18,426	.....	...	...	...	...	...	18,426
6. Mall	61,288	44,337	42,098	2,339	16,951	.....	...	...	...	...	...	16,951
C. Kohlu tahsil..	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.	Not Settled.

NOTE.—The Sibi tahsil figures do not include Quat Mandai, Tokhi, Pur, Phor, Pir Ismail, Tanduri, Dalujal, Sui, Jurani-kand and Pinki which have not been surveyed.

TABLE V.—CULTIVABLE AND IRRIGABLE AREA AND SOURCES OF IRRIGATION DURING 1904-5.

Name of tahsil.	Name of patwarí's circle.	Total area surveyed (acres).	Uncultivated area.				Cultivable area (acres).				Irrigable area.					Unirrigated area.			
			Total area (acres).	Culturable, but not cultivated.	Unculturable.	1	2	3	4	5	6	7	8	9	10		11	12	13	14
D. Nasirabad tahsil	501,224	186,980	159,751	27,229	314,254	303,606	303,606	...	...	...	...	...	...	...	...	...	...	10,648
1 Dombki	25,725	10,005	3,238	6,767	15,720	11,824	11,824	...	...	...	...	...	...	...	...	...	...	3,896
2 Sanari	19,444	1,703	...	1,703	17,741	14,907	14,907	...	...	...	...	...	...	...	...	...	...	2,834
3 Mánjhipur	23,171	2,574	791	1,783	20,597	20,447	20,447	...	...	...	...	...	...	...	...	...	...	150
4 Dhándha.	23,774	2,810	...	2,810	20,964	20,209	20,209	...	...	...	...	...	...	...	...	...	...	755
5 Sohbatpur	27,459	1,960	...	1,960	25,499	25,499	25,499	...	...	...	...	...	...	...	...	...	...	...
6 Nasirábád	83,317	41,924	38,707	3,217	41,393	39,878	39,878	...	...	...	...	...	...	...	...	...	...	1,515
7 Khánpur	151,123	74,758	70,752	4,006	76,365	75,215	75,215	...	...	...	...	...	...	...	...	...	...	1,150
8 Muhama madpur.	46,666	18,530	16,763	1,767	28,136	28,136	28,136	...	...	...	...	...	...	...	...	...	...	...
9 Sirwah	100,555	32,716	29,500	3,216	67,839	67,491	67,491	...	...	...	...	...	...	...	...	...	...	348

Note 2.—The following circles of the Nasirabad tahsil contain unirrigated areas noted against them which have not been included in the statement as they have not been surveyed :—

(1) Lahri Dombki .. 1,600 Acres.
(2) Sanhari .. 938
(3) Dhándha .. 7,000
(4) Nasirabad .. 12,000

21,538

BALUCHISTAN DISTRICT
GAZE TLEER STRIPS.

Sibi District.

TABLE VI.—DETAILS OF AREA UNDER PRINCIPAL CROPS.

Name of tahsil	Year	Total area (acres)		Area (acres) under sowing crops					Area (acres) in the autumn crops							Other crops
		Cultivated	Uncultivated	Wheat	Barley	Oil seeds	Other crops	Lotus	Juar	Mul	Rice	Cotton	Indigo	Wet		
A. Shahrug tahsil	1899-1900	8,399	80	1,687	4,532	155	...	...	3,632	...	730	2,672	...	...	230
	1903-4	9,060	22	4,839	4,487	352	...	...	4,109	...	43	927	2,405	...	824
	1904-5	9,777	44	6,191	5,793	398	...	...	3,542	...	47	660	2,368	...	467
	1900-1	37,717	...	18,170	13,515	371	4,248	36	19,217	18,314	...	199	530	...	504	
B. Sibi tahsil	1899-1900	57,663	...	4,283	361	...	Not cultivated	...	53,380	30,944	...	868	279	...	2,049	
	1894-5	65,997	...	11,072	678	...	7,235	3,141	54,925	34,539	...	750	240	...	2,904	
	1895-6	65,078	...	3,826	410	...	2,043	943	61,252	47,206	...	636	83	...	4,643	
	1896-7	61,977	...	4,098	945	...	2,141	1,012	57,879	35,549	...	448	255	...	3,655	
C. Kohlu tahsil	1897-8	57,639	...	18,318	1,312	...	14,168	2,833	69,321	53,306	...	908	117	62	7,245	
	1898-9	80,970	...	15,359	2,016	...	11,970	1,483	65,581	48,044	...	1,514	90	52	7,538	
	1899-1900	87,171	...	14,823	1,768	...	11,749	1,311	72,345	51,761	...	1,978	...	45	4,827	
	1900-1	100,118	12	19,077	2,291	6	13,620	3,751	81,029	60,532	...	2,580	...	55	5,941	
D. Nasirabad tahsil	1901-2	80,757	12	12,123	2,084	...	5,835	4,404	68,422	45,353	...	2,157	...	131	7,596	
	1902-3	105,973	12	39,448	3,279	...	10,534	5,665	66,513	46,352	...	1,841	...	303	8,073	
	1903-4	108,787	...	28,052	7,587	...	15,857	4,008	80,733	56,343	...	3,522	67	142	8,596	
	1904-5	112,736	...	29,393	8,714	...	14,362	6,317	73,343	49,486	...	4,141	155	104	6,522	

GAZETTEER SERIES.

TABLE VI.—DETAILS OF AREA UNDER PRINCIPAL CROPS.

[illegible]

TABLE VII.—ADVANCES AND RECOVERIES MADE FOR THE PURPOSE OF THE LAND IMPROVEMENT AND AGRICULTURISTS' LOANS ACTS.

Advances and Recoveries made during the years 1897-8 to 1904-5.																			
Total for the years 1897-8 to 1904-5.		1897-8		1898-9		1899-1900.		1900-1.		1901-2.		1902-3.		1903-4		1904-5.			
Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.	Advances.	Recoveries.		
For the purposes of the Land Improvement Loans Act.																			
District Total...																			
12,790	24,284*	1,700	3,676	2,200	2,676	4,510	2,126	1,000	3,493	180	3,883	1,300	3,455	250	3,910	1,650	1,065		
1. Sháhrig tahsíl ...	4,310	9,854	1,200	1,266	300	1,266	910	1,366	500	1,533	100	1,623	100	1,365	...	950	1,200	485	
2. Sibi tahsíl ...	7,900	12,600	500	1,500	1,900	1,250	3,600	700	...	1,900	...	2,100	1,200	1,850	250	2,800	450	500	
3. Kohlu tahsíl ...	580	1,830	...	910	...	160	...	60	500	60	80	160	...	240	...	160	...	80	
For the purposes of the Agriculturists' Loans Act.																			
District Total...																			
40,413	35,612*	1,980	440	400	1,620	4,480	510	30,223	7,455	...	13,023	130	6,442	1,400	4,592	1,800	1,530		
1. Sháhrig tahsíl ...	13,156	9,936	...	...	...	1,600	...	9,006	1,060	...	4,091	30	2,065	1,340	2,110	1,180	610		
2. Sibi tahsíl ...	20,100	18,624	1,500	440	400	1,380	...	390	17,600	4,310	...	5,685	100	3,092	...	2,467	500	860	
3. Kohlu tahsíl ...	7,157	7,052	480	...	...	240	2,880	120	3,617	2,085	...	3,247	...	1,285	60	15	120	60	

* Includes recoveries made on account of advances given in previous years.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE VIII.—SIBI HORSE AND CATTLE FAIR.

Class.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.
Total Animals ...	1,437	1,262	1,060	990	1,204	868	974	1,242	622
1. Branded mares ...	344	353	248	232	293	218	267	287	158
2. Branded fillies ...	14	40	3	23	20	16	32	37	19
3. Fillies 2 and 3 years old ...	113	138	107	113	143	79	104	130	37
4. Foals ...	59	70	44	53	52	74	86	118	106
5. Yearlings ...	138	132	147	75	96	77	126	103	88
6. Geldings ...	64	77	73	62	73	30	42	131	49
7. Mules ...	1	6	1	3	13	10	15	12	1
8. Ponies for mule-breeding ...	4	6	6	2	36	39	26	73	5
9. Donkeys ...	30	31	33	37	35	11	25	27	8
10. Ponies ...	249	210	218	274	203	94	97	91	44
11. Cows and bullocks ...	421	199	200	116	220	170	138	218	100
12. Camels ...	8**	...	...	...	...	50	10	25	7
Remounts purchased ...	40	34	11	30	41	49	33	51	37
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Total Expenditure ..	3,279	3,655	4,008	2,946	4,227	3,823	3,975	4,108	4,538
1. Prizes ...	1,910	2,743	3,534	2,580	3,492	3,139	3,430	3,540	4,065
2. Miscellaneous ...	1,369	912	474	366	735	684	545	566	473

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE VIII.—SIBI HORSE AND CATTLE FAIR.—*contd.*

Class.	1904.	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.
Total Animals ..	1,050								
1. Branded mares ..	149								
2. Branded fillies ..	40								
3. Fillies 2 and 3 years old ..	117								
4. Foals ..	72								
5. Yearlings ..	147								
6. Geldings ..	110								
7. Mules ..	25								
8. Ponies for mule-breeding ..	16								
9. Donkeys ..	33								
10. Ponies ..	55								
11. Cows and bullocks ..	275								
12. Camels ..	11								
Remounts purchased ..	21								
	Rs.								
Total Expenditure ..	4,176								
1. Prizes ..	3,536								
2. Miscellaneous ..	640								

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

**TABLE IX.—AREA IRRIGATED FROM DESERT AND
BÉGÁRI CANALS AND THE REVENUE ASSESSED
DURING 24 YEARS ENDING MARCH 31, 1905.**

Years.	TOTAL		DESERT CANAL		BÉGÁRI CANAL	
	Area irrigated.	Assessment.	Area irrigated.	Assessment.	Area irrigated.	Assessment.
	Acres.	Rs.	Acres.	Rs.	Acres.	Rs.
1881-1882 ..	72,321	65,460	29,392	25,831	42,929	39,629
1882-1883 ...	53,647	55,938	21,839	21,239	31,808	34,699
1883-1884 ...	65,588	69,492	28,437	31,392	37,151	38,100
1884-1885 ...	69,574	70,453	32,901	33,492	36,673	36,961
1885-1886 ...	59,911	60,155	31,366	31,587	28,545	28,568
1886-1887 ...	67,225	67,024	36,873	36,896	30,352	30,128
1887-1888 ...	63,853	64,083	38,354	38,584	25,499	25,499
1888-1889 ...	76,296	76,395	43,671	43,729	32,625	32,666
1889-1890 ...	79,945	79,983	44,661	44,698	35,284	35,285
1890-1891 ...	63,744	63,747	42,748	42,749	20,996	20,998
Average for decennium ending 1890-1891.	67,210	67,273	35,024	35,020	32,186	32,253
1891-1892 ...	50,722	50,725	28,333	28,334	22,389	22,391
1892-1893 ...	63,514	63,517	36,825	36,826	26,689	26,691
1893-1894 ...	57,663	57,665	31,224	31,224	26,439	26,441
1894-1895 ...	65,997	65,999	35,947	35,948	30,050	30,051
1895-1896 ...	65,078	65,082	36,024	36,026	29,054	29,056
1896-1897 ...	62,877	62,880	35,292	35,293	27,585	27,587
1897-1898 ...	87,639	87,664	43,882	43,884	43,757	43,780
1898-1899 ...	80,970	80,974	34,951	34,953	46,019	46,021
1899-1900 ...	87,172	87,176	39,265	39,266	47,907	47,910
1900-1901 ...	100,106	1,01,916	50,490	52,298	49,616	49,618
Average for decennium ending 1900-1901.	72,173	72,359	37,223	37,405	34,950	34,954
1901-1902 ...	80,745	82,531	45,972	47,753	34,773	34,778
1902-1903 ...	105,961	1,41,765	71,465	1,07,243	34,496	34,522
1903-1904 ...	108,788	1,43,106	68,302	1,02,617	40,486	40,489
1904-1905 ...	103,085	1,38,780	71,348	1,07,021	31,737	31,759

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

**TABLE IX.—AREA IRRIGATED FROM DESERT AND
 BÉGÁRI CANALS AND THE REVENUE ASSESSED
 DURING 7 YEARS ENDING MARCH 31ST, 1912.**

Years.	TOTAL		DESERT CANAL.		BÉGÁRI CANAL	
	Area irrigated.	Assessment.	Area irrigated.	Assessment.	Area irrigated.	Assessment.
	Acres.	Rs.	Acres.	Rs.	Acres.	Rs.
1905-1906 ...						
1906-1907 ...						
1907-1908 ...						
1908-1909 ...						
1909-1910 ...						
1910-1911 ...						
1911-1912 ...						

TABLE X.

Prices of Staples in Maunds or Seers.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

TABLE X.—PRICES OF STAPLES IN MAUNDS OR SEERS

Year.	Month.	SHÁHRIG.							
		Wheat.	Júdr.	Rhúca.	Firewood.	Salt.		Wheat.	Júdr.
						Lahore.	Country.		
		Seers.	Seers.	M. S.	M. S.	Seers.	Seers.	Seers.	Seers.
1893	February first week .	11 0	16 0	2 26	2 26	8 0	12 0	11 0	22 0
	July last week . . .	14 0	21 0	2 26	2 11	9 0	17 0	15 0	22 0
1894	February first week .	17 0	21 0	2 26	2 11	9 0	12 0	18 0	32 0
	July last week . . .	19 0	21 0	2 11	2 0	8 0	10 0	19 0	24 0
1895	February first week .	20 0	20 0	2 11	2 11	9 0	12 0	20 0	25 8
	July last week . . .	16 0	20 0	2 11	2 11	7	12 0	17 8	25 0
1896	February first week .	13 8	17 0	2 0	3 8	9 0	11 0	12 12	21 0
	July last week . . .	12 8	15 8	2 25	2 26	9 0	11 0	14 8	17 0
1897	February first week .	8 8	11 0	2 26	3 8	9 0	9 8	9 2	13 0
	July last week . . .	10 8	11 0	2 26	2 5	8 8	10 0	11 12	12 0
Average for quinquennial period ending 1897.	February first week.	14 0	17 0	2 18	2 29	8 13	11 5	14 3	22 11
	July last week . . .	14 7	17 11	2 20	2 11	8 11	11 0	9	20 0
1898	February first week .	10 8	16 0	2 26	3 8	8 8	10 0	10 12	20 0
	July last week . . .	12 8	19 0	3 8	2 5	8 8	10 0	15 0	5 0
1899	February first week .	13 0	22 0	2 26	3 22	8 8	10 0	15 12	18 0
	July last week . . .	13 0	20 0	2 26	2 26	9 0	10 0	17 0	25 0
1900	February first week .	10 8	11 0	2 0	4 0	0	10 0	9 8	12 0
	July last week . . .	10 0	10 0	2 0	2 26	9 0	11 0	12 0	10 8
1901	February first week .	9 12	16 0	2 0	4 0	0	11 0	9 12	17 0
	July last week . . .	15 0	18 0	3 8	2 18	9 0	11 0	16 4	20 0
1902	February first week .	15 0	17 0	3 8	4 0	9 0	11 0	17 0	26 0
	July last week . . .	12 4	14 0	2 0	3 8	9 0	11 0	13 0	15 8
Average for quinquennial period ending 1902.	February first week .	11 12	16 6	2 20	3 30	8 13	10 6	12 9	20 10
	July last week . . .	12 9	16 3	2 24	2 25	8 14	10 10	14 10	19 3
1903	February first week .	12 4	15 8	1 13	4 0	9 0	11 0	12 12	20 0
	July last week . . .	14 8	18 8	2 26	3 22	9 0	11 0	14 4	20 0
1904	February first week .	13 0	20 0	3 8	3 8	10 0	11 0	13 15	23 8
	July last week . . .	16 0	22 0	4 0	3 8	11 0	12 0	16 1	30 0

• Information

Note 1.—The first week of February and the last week of July have been kharif crop has been harvested in the lowland and

Sibi District.

PER RUPEE FOR THE TWELVE YEARS ENDING 1904.

SIBI.						KOHLE.						NASIRABAD.					
Bhisa.	Firewood.	Salt.		Wheat.	Juar.	Bhisa.	Firewood.	Salt.		Wheat.	Juar.	Bhisa.	Firewood.	Salt.		Wheat.	Juar.
		Lahore.	Country.					Lahore.	Country.					Lahore.	Country.		
M. S.	M. S.	Seers.	Seers.	Seers.	Seers.	M. S.	M. S.	Seers.	Seers.	Seers.	Seers.	M. S.	M. S.	Seers.	Seers.	Seers.	Seers.
2 26	2 26	10 0	16 0	•	•	•	•	•	•	11 8	15 0	5 13	9 0	10 0	•	•	•
2 36	2 26	10 0	14 0	22 0	20 0	•	•	12 0	16 0	14 0	23 0	5 13	9 0	10 0	•	•	•
2 26	2 0	10 0	15 0	16 0	22 0	•	•	12 0	13 0	17 0	20 0	4 0	9 0	10 0	•	•	•
2 26	2 26	10 0	15 0	40 0	•	•	•	12 0	13 0	16 0	23 0	5 13	10 0	11 0	•	•	•
2 26	2 26	10 0	16 0	40 0	•	•	•	12 0	15 0	17 0	27 0	3 8	10 0	11 0	•	•	•
4 0	2 26	10 0	16 0	•	•	•	•	•	•	16 0	27 0	4 0	10 0	11 0	•	•	•
2 5	2 26	10 0	14 0	•	•	•	•	•	•	12 0	18 0	4 0	10 0	11 0	•	•	•
2 26	2 26	10 0	14 0	10 0	•	5 13	•	10 0	16 0	12 0	16 8	4 0	10 0	11 0	•	•	•
1 35	2 26	10 0	13 0	•	•	•	•	•	•	8 6	13 8	4 0	10 0	11 0	•	•	•
2 26	2 26	9 0	13 0	•	•	•	•	•	•	10 0	12 8	4 0	10 0	11 0	•	•	•
2 16	2 21	10 0	14 13	33 0	22 0	•	•	12 0	14 0	13 3	21 15	4 4	9 10	10 10	•	•	•
2 39	2 28	9 13	14 6	27 5	20 0	5 13	•	11 5	15 0	13 10	20 8	4 21	9 13	10 10	•	•	•
2 5	2 26	10 0	14 0	10 0	15 0	4 22	5 13	9 0	16 0	10 0	20 0	3 8	10 0	11 0	•	•	•
3 8	2 26	9 0	12 0	26 0	•	4 22	5 13	9 0	16 0	12 8	22 8	4 0	10 0	11 0	•	•	•
2 18	3 22	10 0	13 0	18 0	•	4 22	4 22	•	16 0	13 0	28 0	3 8	10 0	11 0	•	•	•
3 22	3 22	10 0	13 4	16 0	•	4 22	4 0	7 0	10 0	13 0	22 0	4 0	10 0	11 0	•	•	•
0 35	3 22	10 0	14 0	10 0	13 0	•	4 0	6 0	10 0	11 0	12 4	4 0	10 0	11 0	•	•	•
1 24	3 22	10 0	14 0	10 8	•	4 0	4 0	7 0	12 0	10 0	11 4	4 0	10 0	11 0	•	•	•
2 0	3 22	10 0	13 8	13 0	23 0	4 0	5 13	7 0	10 0	9 0	21 0	2 26	10 0	11 0	•	•	•
2 26	3 22	10 0	13 8	31 0	•	4 0	4 0	7 0	10 0	13 8	25 0	4 0	10 0	11 0	•	•	•
2 26	3 22	10 0	13 0	27 4	30 2	4 22	5 13	7 4	9 0	13 8	18 8	3 8	10 0	11 0	•	•	•
1 24	3 22	9 0	13 0	20 0	•	4 22	5 13	7 4	9 0	13 0	17 0	4 0	10 0	11 0	•	•	•
2 1	3 15	10 0	13 8	15 10	20 4	4 17	4 36	7 5	12 8	11 5	19 15	3 10	10 0	11 0	•	•	•
2 21	3 15	9 10	13 2	20 11	•	4 13	4 21	7 7	11 6	12 6	19 9	4 0	10 0	11 0	•	•	•
0 25	3 22	10 0	14 0	13 8	21 4	4 22	5 13	6 12	10 0	•	•	•	•	•	•	•	•
2 0	3 8	10 0	14 0	21 12	•	4 22	5 13	7 4	9 8	•	•	•	•	•	•	•	•
2 0	3 8	10 8	14 0	22 0	24 0	4 22	5 13	7 4	9 8	12 0	28 0	8 0	11 0	16 0	•	•	•
4 0	3 8	10 8	14 0	27 9	27 0	4 22	5 13	8 0	10 0	15 0	29 0	8 0	11 0	16 0	•	•	•

not available.

selected to show the state of affairs prevailing immediately after the
the abri crop has been harvested in the highlands.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

TABLE X.—PRICES OF STAPLES IN MAUNDS OR SEERS

Year.	Month,	Sháhriq.							
		Wheat.	Juar.	Bhúsa.	Firewood.	Salt.		Wheat.	Juar.
						Lahore.	Country.		
		S.	S.	M S.	M.S.	S.	S.	S.	S.
1905	{ February first week. July last week.								
1906	{ February first week. July last week								
1907	{ February first week. July last week.								
Average for quinquennial period ending 1907.	{ February first week. July last week.								
1908	{ February first week. July last week.								
1909	{ February first week. July last week.								
1910	{ February first week. July last week.								
1911	{ February first week. July last week.								
1912	{ February first week. July last week.								
Average for quinquennial period ending 1912.	{ February first week. July last week.								

TABLE XI.

PRINCIPAL ROUTES

IN THE

SIBI DISTRICT.

LIST OF ROUTES.

- I.--Sibi-Pishin Route.
- II.--Quetta-Ziárat-Smállan Road
- III.--Sibi-Jacobábád Route.
- IV.--Sibi-Dera Bugti-Rojhán Route.
- V.--Sibi-Kahán-Kohlu Route.
- VI.--Harnai-Loralai Route.
- VII.--Dera Bugti-Jacobábád Route.
- VIII.--Lashkar Khán-Kot Malguzár Route.

NOTES.—(1) The route lists are intended primarily for District officials. They merely indicate the more important routes used by caravans, etc., and make no pretension to be exhaustive. Distances, except when drawn from published route lists, are approximate only. A distance, not taken from a public route list, is marked by the letter c, *i.e.*, *circa*.

(2) The following nomenclature has been used:—

Metalled Road } indicates that a road is fit for
Unmetalled Road } carts.
Bridle-path indicates a made path fit for camel
 and other pack transport.

A *track* is unmade, but usually fit for camel transport.

A *footpath* or *path* is ordinarily used by runners and footmen, but is generally fit for horses and donkeys and is traversable even by loaded camels in many cases.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE I.—SIBI-PISHÍN ROUTE.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.*
Sibi R.S., L.P., T., P.O. Head-Quarters of Sibi District.	...	...	Dāk Bunga- low, 2 Serais.	
Nāri Gorge. L. P., R.S. T.	7½	7½	...	A track to Gulu Shahr c 2 miles.
Tandūri. L. P., R. S., C.	8	15½	.....	At c 3 miles is passed the Filangi Kusutagh flat which is owned by the Langāni Marris and cultivated every third year. A footpath runs to Bādra by Rēkhmi and another called Bor to Khajjak. This is used when the Nāri river is in flood. To the south-east of the station is the Sāntak Kund flat and to its north-east the Sohrén Dhār.
Bābar Kach L. P., R. S., T.	8½	24	.....	At 1½ miles from Tandūri is Kalāti Kila, once a military post, but now abandoned. The Béji river joins the Bādra at c ½ miles from Bābar Kach. (a) A track from Bābar Kach to Quetta via Sāngān (c 83 miles). (b) An unmetalled road to Quat and Mandai (c 11 miles), and thence a footpath by the Arand Pass to Khajjak and Sibi (c 32 miles),

NOTE.—R. S.=Railway Station.

R. S. C.=Railway Station (closed for traffic).

L. P.=Levy Post.

T.=Telegraph.

P. O.=Post Office.

* Unless otherwise stated the side-paths start from places in col. 1, opposite which they are mentioned.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE I.—SIBI-PISHIN ROUTE.--continued.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Bábar Kach, L.P., R.S., T.— <i>contd.</i>	8½	24	.....	(c) Unmetalled road from Bábar Kach to Dáláli (c 11 miles) the Dáda stream being crossed at about 8 miles; Kauradaff (c 22 miles), (about 1 mile from Kaura daff at a place called Dóz, a path takes off to Buzér Kach c 12 miles; and Máwand c 13 miles), Khattan, via Chákarthank (c 9 miles) (the unmetalled road extends to this point), Wázi (c 12 miles), Khurrod (c 16 miles), Naldaff or Triman (c 14 miles) and Kahán (c 10 miles). (d) A path from Kauradaff to Kohlu via Buzér Kach (c 15 miles), Máwand (c 18 miles), Jiwani (c 16 miles), Bor (c 14 miles) and Kohlu (c 24 miles). (e) A bridle path to Gumbaz in the Duki tahsíl of the Loralai District via Tung (16 miles), Gamboi (16½ miles), Katúri (12½ miles), Pazha (12½ miles), Gháti Bridge (16 miles) and Gumbaz (8 miles).
Spítangí or Ganéji. R.S., L.P., T.	20	44	.....	Gandakin Daff, a Langáni Marri Levy post is passed at 2½ miles, and about a mile further is the Lérav Thaf which is the boundary between the Langáni and the Chhalgari Marri. Kucháli Levy post and Railway station (now closed for

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE I.—SIBI-PISHIN ROUTE.—*continued.*

Stages.	Intermediate distance in miles.	Total distance in miles.	Accommodation for travellers	Remarks and side-paths.
Spintangi or Ganéji, R.S., L.P., T.—(<i>contd.</i>)	20	44	.....	<p>traffic) is passed at $7\frac{1}{2}$ miles from Sábár Kach. About four miles from Kucháli is Bandki, where there is a Railway gangmen's hut known by the gangmen as the Kálápáni on account of the dearth of water. Hence a footpath to Harnai called Phoradag. Another footpath called the Dédáni Charwát runs over the Minán Sohr hill and descends into Spintangi. This is only used by footmen in winter. At $8\frac{1}{2}$ miles from Kucháli is the Dalujál Levy Post and Railway station (closed), whence a footpath takes off to Quat over the Uch Takrai and another along the bed of the Dáda stream to Mián Kach and Harnai through the Zoi Tangi. This track was formerly used by caravans. At $c\ 1\frac{1}{2}$ miles from Spintangi the main path to Mián Kach branches off and is much used by the local people. There is an unmetalled road from Spintangi to Duki via Kuriák (8 miles), whence a path runs to Pur over the Lakar hill. This is difficult for pack animals. An unmetalled road to the valley branches off at 2 miles from Kuriák, the distance from Spintangi to Pur being $c\ 28$ miles. The distances from Kuriák to the following places are as follows. Kandi Levy post ($11\frac{1}{2}$ miles), Sembar camp (14 miles), Dabar Kot ($12\frac{1}{2}$ miles) and Duki ($9\frac{1}{2}$ miles).</p>

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE I.—SIBI-PISHIN ROUTE.—continued

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side paths.
Harnai, R.S., L.P., T., P.O.	16	60	Dāk Bungalow, Political Officer's Rest-house, Serai.	Sunri village is passed at about 7½ miles, whence a track goes to Warikha (c 24 miles), from which there is a path to Duki over the Fakir Naraj (c. 24 miles). Warikha to Pur is c 7 miles. Sanjāwi is 38 miles, Duki 58 miles and Loralai 55½ miles by a metalled cart road.
Shāhrig, R.S., L.P., T., P.O. Tahsíl headquarters.	16½	76½	Rest-house, Political Officer's Rest-house.	The Nasak Railway station is passed at 8 miles and the Shahédar Ziárat at about 5 miles further on. Footpaths from Shāhrig to Ziárat by Wuch Aghbargai (22 miles), and by Doméra (21 miles), the latter is extremely difficult and fit for foot passengers only. There is another path to Ziárat via Punga (about three miles from Shāhrig) and the Dozakh Narai.
Khost L.P., R.S., T., P.O.	11½	87½	Railway Rest-house.	At about three miles from Shāhrig is the Ambon village, whence a path goes to Sangan over the Sar Bázhæ Narai through Súr Kár and Kamán Tangi.

ROUTE I.—SIBI-PISHIN ROUTE.—*continued*

Stages.	Intermediate distance in miles.	Total distance in miles.	Accommodation for travellers.	Remarks and side-paths.
Mángi, R.S., L.P., T.	15½	103½		The Zardalu Railway station is passed at about five miles from Khost, and about half a mile further a footpath branches off to the Hanna valley over the Uzhda psha pass. This path was largely used by the people before the railway was built. Dirgi Railway station is about three and a half miles further. Hence footpaths take off to Kásim Tangi by the Zauki rift, and to Mángi by the Chhappar rift, locally known as the Dirgi Tangi. The main road goes over the Chhappar hill by the Kazha Liár (winding path), the distance to the top being c 4 miles, whence a path descends into the Mángi valley. From Mángi there is a good bridle path to Ziárat through the Kásim Tangi (21 miles), and a footpath to Kánr through the Khum Tangi. The latter is not fit for horses.
Kach(Kats), R.S., L. P., T.	12½	115¾	Rest-house. (Khánsá- mah main- tained dur- ing summer months).	About 6 miles from Mángi is the Mudgorge Railway station, locally known as the Zangal or Kúz station. Hence a footpath takes off to Tor Shor in Zarghún Ghar (c 12 miles). About three miles further a footpath goes to Hamadún by Wargas Plae. The Kach fort now used as a Levy post is about 1½ miles from the Railway station. Ziárat is 32½ miles, and Quetta 28½ miles by a metalled cart road.

ROUTE I.—SIBI-PISHIN ROUTE. *concluded.*

Stages	Intermediate distance in miles.	Total distance in miles.	Accommodation for travellers.	Remarks and side-paths.
G h a r k a i Camp.	11	126½		The Bráhmán Kotal is about 3 miles from Kach, the watershed of which is the boundary between the Sháhrig tahsil of the Sibi District and the Pishin tahsil of the Quetta-Pishin District. About 6 miles further on the Zawarkar-Quetta road branches off.
P i s h i n, T., P. O., Head- quarters of Pishin Sub-divi- sion.	16½	143	Rest House, Political Rest-house.	The road runs along the bed of the Spézhanaí nullah and joins the Pishin-Déra Ghazi Khan road at 8½ miles from Pishin.

GENERAL DESCRIPTION.

The total distance from Sibi to Pishin is 143 miles. The height of Sibi is 350 feet above the sea level, and the highest point along the route is the Bráhmán Kotal which is 5,633 feet. The principal streams passed are the Nári and its affluents which is crossed several times in the first 24 miles; the Gandakíndaff between Bábar Kach and Kucháli; Dáda and Kuriák between Dalújál and Spíntangi; Loe Lahr and Sare Lahr between Spíntangi and Sunri; Súrwám, Shahédar and Punga between Harnai and Sháhrig; Amboh, Khost and Dirgi mándas and the Zhizhgai, which last named lies between Mángi and Kach and the Kákar Lora. The last part of the road between Kach and Pishin is in good condition.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

The water-supply, along the whole route is obtained from running streams or from springs, and is generally good and abundant. The water at Kach is considered laxative. There are bazars at Sibi, Spintangi, Harnai, Sháhrig, Khost and Pishín, and shops at Dirgi, Mángi and Kach, where ordinary native provisions in limited quantities are procurable. For supplies in large quantities, and for fowls, eggs, milk, sheep and goats, fuel, and fodder at these places, and for supplies at all other places previous notice should be given to the Tahsildárs through the Political Agents concerned. The country between Sibi and Spintangi lies in the Sibi Sub-division, from Spintangi to Kach inclusive in the Sháhrig tahsil of the Sibi District and Gharkai and Pishín in the Pishín tahsil of the Quetta-Pishín District.

ROUTE II.—QUETTA-ZIARAT-SMALLAN ROAD.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Quetta to Gandak.	14	14	Rest-house.	
Sarantangi.	6½	20½	Military Works Bungalow	Road to Fuller's Camp (9 miles) on the Pishín-Sibi route.
Kach, R. S., L. P., T. P.O.	8½	28½	Rest-house, Dák Bungalow.	A link road to Bráhmán in the Sháhrig tahsil branches off at 27½ miles from Quetta. (a) Track to Fuller's Camp over the Ush Narai Kotal. (b) Track to Kach village, Hamadún (5 miles), Gogi (4 miles) and Tangi (3 miles). A fort, now occupied by Levies, is 1½ miles from the station.
Kámr Levy Post.	16½	45½	Rest-house Dák Bungalow.	A pass locally called Loarai band but also known as the <i>Wdm Kotal</i> is reached at 9½ miles. Path from Kámr to Tangi over the Tsaru pass and thence to Gogi and Hamadún. This path is steep and difficult.

GAZETTEER SERIES.

ROUTE II.—QUETTA-ZIÁRAT SMÁLLAN ROAD.—*contd.*

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Ziárat (Gushki) L.P., T., P.O. Head-quarters of Sibi District during summer months.	16	61½	Rest-house, Dák Bungalow).	(a) From the fort across the Kowás stream* at 4½ miles a good bridle-path goes to Spérárágha 9½ miles. (b) At Zandra 2½ miles from Kowás, there is a Levy Post and also a unfurnished M.W.D. hut, a bridle-path runs through the Zandra Tangi to Manra (8 miles), from which place there is a track which leads to Chichanak, Ghwanz and Pui (c 2 miles). From Manra Spérárágha can be reached through the Zargai Tangi (8 miles.) (a) A foot-path, sometimes used by laden bullocks and donkeys goes from Manra to Karbi Kats (15 miles). It passes through Gharata Mándá, Chisana Manra, the juniper forest over the slopes of the Kása hill, the Sareobo Tsari, Much Tangi, Dhre Tangi, and at places is difficult for horses. The last 5 or 6 miles run through a gorge enclosed by high hills. (c) A good bridle-path fit for horses and laden camels connects Ziárat with Mángi station 21 miles. (f) Foot-path from Ziárat to Sháhrig via Wuch Aghbargai (22 miles). (g) Foot-path over the Doméra hill to Sháhrig (21 miles). This path is steep and difficult, and only fit for foot passengers.
Chautér (Levy Post).	16	77½	Rest House.	At about ten miles is Karbi Kats from which there is a foot-path to Manra. (a) From Chautér a track fit for laden camels runs over the Kazha Narai pass and then descends into the Shírin valley (3 miles). Pui is reached at about 8 miles further on.
Smállan (Levy Post) T., P. O.	24½	102	Dák Bungalow. Serai.	

GENERAL DESCRIPTION.

The total distance from Quetta to Smállan is 102 miles. The road, which is maintained by the Military Works Department, is bridged and partially metalled and is fit for carts. It is liable to be blocked by snow during the winter months. At Ziárat Tsari, about 4 miles from Ziárat, it crosses the highest point (8,600 feet) traversed by any cart road in Baluchistán. The part between Kowás and Smállan possesses interest from the fact that a portion of it was travelled over and described by Richard Steel and John Crowther, English merchants, who made their way from India to Persia in 1614. They mention Durues or gates of the mountains (apparently Dhre Tangi), Coasta or Kowás and Abdun or Hamadún. In the Wani valley, 4 miles from Chautér, are to be seen the ruins of the three villages known collectively as Seh Kota and separately as Káraván kila, Ráni kila, and Dom kila. Smállan lies on the Harnai-Loralai cart road, 36 miles from Harnai and $19\frac{1}{4}$ miles from Loralai. Duki is about 22 miles from Smállan. About 6 miles from Chautér a foot-path, made in the spring of 1897 under the orders of Colonel Gaisford, leads to Pui over the Khatki or Taki hill. From Rigora (14 miles) a track goes to Pui, 14 miles. Gandak and Sarántangi lie in the Quetta tahsil, Kach, Kánr and Ziárat in the Sháhrig tahsil of the Sibi District and Chautér and Smállan in the Sanjáwi sub-tahsil of the Loralai District. Khánsámahs are maintained at Kach, Kánr and Ziárat Rest Houses from May to September.

The water-supply at Gandak is small but good, at Kach it is abundant but somewhat salt and laxative. At other places it is abundant and good.

There are shops at Kánr, Ziárat and Chautér during May to September, half a dozen permanent shops at Smállan and one at Kach, at which *atta*, grain, fuel and native provisions are procurable. Supplies of all descriptions are obtainable at Ziárat during the season. For other places previous notice should be given to the Tahsildárs concerned through the Political Agent.

During the season pony tongas ply between Kach Railway station and Ziárat, and baggage camels are procurable on hire. To obtain these, application should be made to the Thánadár of Ziárat.

BALUCHISTAN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE III.—SIBI-JACOBÁBÁD ROUTE.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Sibi L. P., T., P. O., Headquarters of Sibi District.	..	...	Dák Bungalow. Two Serais.	
Mall Levy Post.	14	14	Civil officials' Rest House.	(a) Track to Mithri, the headquarters of the Raisani Sardar. (b) A track to Khattan via Gazi (12 miles). Lahri nullah (24 miles), Fatteh Kumb (10 miles) and Khattan (15 miles.)
Théri ...	11	25	.....	A Dombki village.
Lahri Levy Post.	10	35	Mehman Khana or Rest House maintained by the Dombki chief.	Head-quarters of the Dombki tribe. A track over the Pat to Bellpat Railway station (c 23 miles). (b) Another to Lindsay Railway station (c 20 miles) and a path to Dera Bugti (c 70 miles). (c) A path from Lahri to Kahán, the head-quarters of the Marri tribe, via Gori (c 16 miles), Sari Sor (c 12 miles), Marwár (c 10 miles), Sártáf (c 12 miles) and over the Nafusk pass to Kahán (c 18 miles). The country between Lahri and Marwár (both inclusive) lies within the limits of the Dombki tribe, and beyond Marwár in the Marri country. For supplies previous notice should be given to the Political Agent, Sibi.
Phuléji L. P.	16	51	K. B. Hasan Khan Kahéri's Bungalow	Tracks to Dera Bugti (c 60 miles), Nuttall (c 18 miles) and Bellpat (c 24 miles).
Chhatar ...	10	61	.....	Track to Nuttall (c 16 miles).

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.Sibi District.

ROUTE III.—SIBI-JACOBÁBÁD ROUTE.—concluded.

Stages.	Intermediate distance in miles.	Total distance in miles.	Accommodation for travellers.	Remarks and side-paths.
Sháhpur L. P.	12	73	.....	(a) A track to Temple Déra (c) 20 miles) and another to Nuttall (c 28 miles). (b) Track to Sui (87 miles) via Gora Ná-ri (31 miles), Sanari (8 miles), Toj (24 miles) and Sui (24 miles). (c) Track to Khajúri, (97 miles) by Uch (12 miles), Pannia (16 miles), Bhoi (8 miles), Asréli (10 miles), Sui, (21 miles), Hérán (8 miles), Mando Khand (17 miles), and Khajúri (5 miles). There is an alternative route to Sui via Nilag (16 miles), Mando Khand (9 miles) and Sui (5 miles).
Jacobábád (in Sind) R.S.T., P. O. Headquarters of Upper Sind Frontier District.	31	104	Political Rest-house.	.

GENERAL DESCRIPTION.

The total distance from Sibi to Jacobábád is 104 miles. The track lies mostly over *pat* and affords easy going in ordinary weather, but becomes difficult and indeed almost impassable after heavy rain. Mall lies within the Sibi tahsil, and Sháhpur, for purposes of political control, is included in the Nasrábád Sub-division. The intermediate stages lie in the Lahri niábat of Kalat, but the Political Agent, Sibi, exercises political control over the Dombki and Kahéri tribes. There are villages and banias' shops at each stage, and ordinary native provisions and fodder are obtainable in small quantities, for larger quantities previous notice should

BALUCHISTÁN DISTRICT.
GAZETTEER SERIES.

Sibi District.

be given to the Political Agent, Sibi. Drinking water is obtained from wells, and the quality is said to be fair except at Théri, where the water is brackish. The quantity obtainable at each stage is however limited, and in the case of troops intending to use this route, previous notice should be given to the Political Agent, Sibi.

ROUTE IV.—SIBI-DERA BUGTI-ROJHÁN ROUTE.

Stages.	Intermediate approximate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Sibi, R.S., L.P., T., P.O., Headquarters of Sibi District.	...	...	Dak Bungalow, 2 Se rais.	
Mall, L.P....	14	14		For side-paths, see route No. III.
Théri ..	11	25		A Dombki village.
Lahri, L.P..	10	35	Me h m a n Khana or guest house of the Dombki chief.	See route No. III.
Dinghán ...	21	56	No village	The path for the first 15 miles lies within the Dombki limits and then enters the Bugti hills. The drinking water which is obtained from a spring is somewhat brackish and aperient.
Gwach Drig	18	74	No village	Water from Siáháf stream good and abundant.
Chigardi ...	15	89	No village	The portion of the road over the Andra Wér pass (about 8 miles from Gwach Drig) is steep and difficult. Water from Siáháf stream good and abundant.

BALUCHISTÁN DISTRICT.
GAZETTEER SERIES.

Sibi District.

ROUTE IV.—SIBI-DERA BUGTI-ROJHAN ROUTE.—concluded.

Stages.	Intermediate approximate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Sangsila, L.P.	14	103	A small hamlet of the Bugti tribe.	Good water obtainable from stream. There is a shop in the hamlet at which ordinary native provisions can be obtained in small quantities.
Déra Bugti, L.P., Headquarters of the Bugti Nawáb.	22	125	Bugti chief's guest house	Path lies along the bed of the Siáháf stream, but is fairly good. There are several shops in Déra Bugti at which ordinary supplies are obtainable. Water good and plentiful.
Loti ...	20	145	.....	A small Shambáni Bugti village. There is a bania's shop at which ordinary native provisions in small quantities are available. Water is obtained from wells dug in the bed of the Loti hill torrent.
Khajúri ...	10	155	.....	A small Shambáni Bugti village. Half way from Loti is passed the Rohél Wad or Kotal which is fit for laden camels. Water from springs good.
Kabodráni..	10	165	.....	Kabodráni lies in the Mazári (Punjab) limits, the Bugti country extending up to Mando Kund (about 6 miles from Khajúri). Path runs through a sandy plain and undulating country. No village. Water from Sohri stream somewhat brackish.
Bhandowála	23	188	Rest-house.	Mazári Border Police Post. Water from wells not good.
Rojhán ...	11	199	Dak Bungalow.	Head-quarters of the Mazári chief, 38 miles from Rajanpur, and 125 miles from Déra Gházi Khán.

GENERAL DESCRIPTION.

The total distance from Sibi to Rojhán is about 199 miles. Up to Dinghán the country is open and easy. After this the path enters the hills and turns in an easterly direction to Loti, whence it takes a southerly direction as far as Kabodráni; after Kabodráni it again turns in an easterly direction. Sibi and Mall lie in the Sibi tahsíl of the Sibi District, the country from Théri to Lahri is in the Dombki country, from Dinghán to Khajúri in the Bugti Tribal Area, and thence onward in the Mazári (Punjab) limits. In ordinary years grass and fuel are obtainable at each stage.

Previous notice for supplies should be given to the Political Agent, Sibi, for places between Sibi and Khajúri inclusive), and to the Deputy Commissioner of Déra Gházi Khán for the other stages.

An alternative route, which lies in comparatively more populated and better cultivated country, would be from Lehri to Phuléji (Kahéri village, c 16 miles), Sháhpur (Bugti Levy Post and a Saiad village, c 24 miles), Shahr Karam Khán in the Nasírábád tahsíl (c 18 miles), Sanari Levy Post in Nasírábád (c 19 miles), Malguzár (c 15 miles), a village in Nasírábád, Puchár Adya (c 20 miles), a village in the Kashmor circle of the Jacobábád District, Sháhwáli (c 18 miles), a Mazári village in the Déra Gházi Khán District and Rojhán (c 18 miles). The total distance from Lahri to Rojhán being about 148 miles.

BALUCHISTAN DISTRICT.
GAZETTEER SERIES.

Sibi District.

ROUTE V.—SIBI-KAHÁN-KOHLU ROUTE.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Sibi, R.S., T., P. O.	...	...	Dak Bungalow, 2 Se-rai.	
Mall, L.P.	14	14	.....	Unmetalled road from Sibi to Mall. For side-paths, see route No. III.
Tratáni	22	36	...	The path to Tratáni lies through a sandy plain, the camping ground being in Dombki limits. Water from stream plentiful, but brackish. Fuel and grass obtainable if previous notice is given. A halt may be made if necessary at Gazi (c 12 miles) from Mall.
Méhi	10	46	.....	The path lies along the bed of the Sorén Kaur (Gandár in map). Méhi is in the country of the Ghazani Marri. Water brackish.
Dáhu	19	65	.....	The path now runs through hilly country. At about a mile from Méhi the Gandár Wad pass (about $\frac{1}{2}$ mile in length) is crossed and about 9 miles further on the Taimúr Pul. Water good. Fuel and grass obtainable.
Naldaff	12	77	.....	Path through hilly country. The Hotáni Kotal (pass), which is about $1\frac{1}{2}$ miles in length, is passed at about 3 miles from Dáhu. Water from stream brackish.
Kahán	10	87	.....	The path for about 3 miles runs along the bed of the Saro Rod and then for about 7 miles over undulating ground. Kahán is the head-quarters of the Marri chief, and contains several shops at which ordinary native provisions are obtainable. Water from springs good. (a) A path from Kahán to Labri via Sártáf, see route No. III. (b) Path to Bábar Kach Railway station, see route No. I.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE V.—SIBI-KAHAN-KOHLU ROUTE.—concluded.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Kauráni Awaráni.	c 9	96	.....	The Do-Jhamak Kotal (pass) is crossed at about 4 miles from Kahan. Both sides of the Kotal are steep and stony, and in their present condition (1905) are difficult for laden camels. Water from Sorén Kaur brackish. Grass and fuel obtainable. (a) A hill path leads from Kauráni Awaráni to Triman (c 12 miles) and Vitakri (c 23 miles).
Dhil	... c 14	110	.....	The Makhmár hill torrent is crossed several times. Water from Makhmár brackish. Fuel and grass obtainable.
Bor	... c 12	122	...	The path lies along the Makhmár stream for about 9 miles when the Phazal Chíl pass is crossed. Water from Domak stream good. Grass and fuel obtainable.
Kohlu, L. P., T., P. O., Head- quarters of the Kohlu Sub- tahsil.	c 16	138	Rest-house.	The Bor pass, which is steep and stony, is crossed about $\frac{1}{2}$ mile from Bor. The rest of the road runs over the Kohlu plain (<i>pat</i>) and is level and easy. After heavy rain the ground near Kohlu is impassable.

GENERAL DESCRIPTION.

The distance from Sibi to Kahan is about 87 miles and to Kohlu about 138 miles. The path for the greater part lies through hilly and stony country. It is rough and difficult, but is practicable for laden camels. The Do-Jhamak and Bor passes are especially steep and difficult. Sibi and Mall lie in the Sibi tahsil, Tratáni belongs to the Dombkis, and the country between Méhi and Bor is in the Marri Tribal Area. Fuel and grass are generally procurable locally, but for other supplies previous notice should be given to the Political Agent, Sibi.

ROUTE VI.—HARNAI-LORALAI ROUTE.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Harnai, L. P. R. S., T. P. O.	...	...	Rest-house, Dāk Bungalow. Serai.	
Tor Khan, L. P.	11½	11½	Dāk Bungalow, Bardasht Khana.	The road crosses the Harnai stream and runs through Meh-rab Tangi.
Rézzgai L. P.	15½	26½	Rest-house.	The road goes through the Dil-kúna gorge and over the Ush-ghára, where there is a Bardasht Khana (mile 24½).
Smállan ...	9½	35½	Dāk Bungalow, Dham sala, Serai.	Cart road from Smállan to Ziarat, 40½ miles. See route No. II.
Sanjáwi, L. P., T., P. O. Head quarters of Sanjáwi Sub-tahsil,	2	37½	Civil Officer's quarters in the fort, where the tahsil is also located.	Cart road to Duki.
Loralai, L. P., T., P. O. Head-quarters of the Loralai District.	17½	55	Dāk Bungalow.	The Inzarghát Levy Post is 6½ miles from Sanjáwi.

GENERAL DESCRIPTION.

This road, which is maintained by the M. W. Department, is metalled and bridged and fit for carts. There is also a daily tonga service between Harnai and Loralai. Harnai and Tor Khán lie in the Sháhrig Tahsil of the Sibi District, and Rézzgai, Smállan and Sanjáwi in the Sanjáwi tahsil of the Loralai District. Ordinary native provisions and fodder are procurable at all stages except Rézzgai, where there is no village or shop. For supplies in larger quantities previous notice should be given to the Tahsildars concerned through their Political Agents. Water is good and abundant at all places except Rézzgai, where supply is limited.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE VII.—DERA BUGTI-JACOBABAD. SIND.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Bugti Déra to Gandoi.	25	25	.....	Drinking water is obtainable from <i>kacha</i> wells made in the bed of the Gandoi Nain. No accommodation for travellers. There is a bania's shop and ordinary supplies are procurable in small quantities. For supplies in larger quantities, notice should be given to the Bugti chief through the Political Agent, Sibi.
Goranári ..	25	50	.....	Drinking water obtainable from a <i>pacca</i> well. There is a small rest-house and a bania's shop in the neighbouring village (2 miles distant). Ordinary supplies are procurable in small quantities. For supplies in larger quantities, notice should be given to the Tahsildar, Nasirábád.
Bahadurpur, Sind.	18	68	.....	} Sind.
Jacobábád, Sind.	10	78	.....

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

ROUTE VIII.—LASHKAR KHÁN KOT—MALGUZÁR.

Stages.	Intermediate distances in miles.	Total distances in miles.	Accommodation for travellers.	Remarks and side-paths.
Lashkar Khan Kot, west of Tahsil to Jangdost.	c 15	15	... ..	No water and no local supplies. Notice for requirements should be issued to the Tahsildár, Nasirábád.
Usta	c 14	29	.....	Water obtainable from the Begári canal and wells. No accommodation for travellers. Small bazar at which supplies in small quantities can be procured.
Rojhan	c 14	43	.....	Water from <i>pucca</i> well. No accommodation for travellers. Two banias' shops at which ordinary supplies can be obtained.
Nasirábád...	c 13	56	.....	Head-quarters of Nasirábád Sub-division. Water from <i>pucca</i> well. No accommodation for travellers. All ordinary supplies can be obtained in small bazar.
Ahmadpur Hambi ... Sanari, Sind	12 12 8	68 80 88	... ..	Rest-houses at each stage; supplies in small quantities procurable.
Malguzar ... "	16	104	.....	No accommodation for travellers. Water during the hot weather obtainable from the Rájwah canal. In cold weather no good drinking water nearer than four miles. Three banias' shops, at which ordinary supplies can be obtained.

TABLE XII.—TRAVELLERS' BUNGALOWS.

There are three kinds of travellers' bungalows in the District, namely, (1) *dák* bungalows, (2) rest-houses, and (3) Political bungalows and Civil and Public Works Inspection bungalows. The standing orders relating to them (1905) are reproduced briefly below.

No permission is required for the occupation of *dák* bungalows and rest-houses. All Government servants, European and Indian, drawing Rs. 100 per mensem and over, *náib* tahsildárs, European and native private gentlemen, native commissioned officers and European clerks are entitled to shelter. Other Government servants in superior service drawing less than Rs. 100 per mensem, as well as European soldiers, are entitled to shelter in a special room set apart in the compound. Sepoys, police menials and native travellers, other than those mentioned above, are entitled to accommodation, free of charge, in the shelters attached to the out-houses. The charge is Re. 1 and annas 8 respectively for each person occupying a *dák* bungalow or rest-house for every 24 hours or part thereof. Servants of such persons are entitled to accommodation in the out-houses free of extra charge. Each person occupying the special room in a *dák* bungalow already referred to is required to pay Ans. 2 and in a rest-house An. 1 for the same period. There is no limit to the period of occupation. Food is supplied in the *dák* bungalows at the rates laid down in the tariff hung up in the rooms, unless terms are specially agreed upon. The *Khánsámah* of the bungalow, if required, also cooks provisions furnished by travellers, the charge for cooking including firewood being As. 8 per day for each person.

Dák
bungalows
and rest-
houses.

Travellers halting in the rest-houses have to make their own arrangements for supplies and for cooking, but where possible the *chaukidár* or Levy man in charge provides on payment, wood, *bhúsa*, &c.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

Political
 bungalows
 and Civil
 and Public
 Works
 Inspection
 bungalows.

Political bungalows and Civil and Public Works Inspection bungalows are houses specially reserved for departmental officers on tour. The gazetted officers of the department, to which the bungalow belongs, have prior claims to accommodation in the order of their seniority, but, subject to this rule, the officer in charge of an Inspection bungalow can lend it without payment to any gazetted officer of any Government department travelling on duty. Officers in charge of bungalows are also authorised to permit non-officials and officials not travelling on duty to occupy Inspection bungalows, when available, for a period not exceeding seven days.

BALUCHISTÁN DISTRICT.

GAZETTEER SERIES.

Sibi District.

TABLE XII.—TRAVELLERS' BUNGALOWS.

Note.—R. H. = Rest House; D. B. = Dak Bungalow; R. I. H. = Revenue Inspection House; P. W. I. B. = Public Works Inspection Bungalow.

No.	Bungalow.	Accommodation.	Officer in charge.	Establishment.	REMARKS.
A. Shahrig Tahsil.					
1	Harnai D. B.	... 4 rooms with bath-rooms, a dressing room and bath-room extra, also a special room furnished with chairs, tables and 4 beds.	Garrison Engineer, Loralai.	Khánsámah, bhishti and sweeper.	Water from spring, and supplies obtainable from bazar within 100 yards.
2	" R. H.	... 6 rooms, 4 bath-rooms and a store-room. Cook-house.	Ditto.	One sweeper-chauki dár.	Water from a <i>vidla</i> flowing near the house and supplies obtainable from bazar within about half a mile.
3	" R. I. H.	... 4 rooms, 1 bath-room and 1 kitchen partly furnished.	Tahsildár, Shahrig.	Nil.	This is old Harfai Tahsil and is used by the Tahsil officials.
4	Kach D. B.	... 2 rooms with bath-rooms furnished with chairs, tables and two beds.	Garrison Engineer, Loralai.	Khánsámah, bhishti and sweeper.	Water from a tap. There are 2 shops. The khánsámah is only maintained from 1st May to 30th September. When there is no khánsámah, the bungalow is classed as a rest-house.

TABLE XII.—TRAVELLERS' BUNGALOWS.—(contd.)

No.	Bungalow.	Accommodation.	Officer in charge	Establishment.	REMARKS.
5	Kánr D. B.	... 4 rooms with bath-room, cook-house and stable and servants quarters.	Garrison Engineer, Loralai.	Khánsámah, bishit and sweeper for 6 months in the summer.	Water from a tap and there is a bania's shop during the summer season. Supplies obtainable from village within 2 miles. When there is no khánsámah, the bungalow is classed as a rest-house.
6	Kach R. I. H.	... A room in the fort...	Tabshidár, Sháhrig.	Nil.	Water from a stream and food supplies from 2 shops in the fort.
7	Khost R. I. H.	... Officer's room, bath-room and cook-room, one bed.	Ditto.	Nil.	Supplies of every kind available, and water in taps.
8	Pur R. I. H.	... One room with bath-room, cook-house and out-house, 2 beds, chairs and lamp.	Ditto.	Nil.	There is a big well containing good water near the house. Supplies available in summer only.
9	Sháhrig P.W.I.B.	... 4 rooms with 2 bath-rooms furnished with chairs, tables and beds.	Political Agent, Sibi	Nil.	Supplies can be had from the bazar, and water from spring or pipe.
10	Sháhrig R. H.	... 2 rooms, 2 dressing rooms, and 2 bath-rooms, furnished.	Garrison Engineer, Loralai.	Sweeper ...	Ditto.

BALUCHISTAN DISTRICT.
GAZETTEER SERIES.

Sibi District.

11	Tor Khán D. B.	... 4 rooms with bath-rooms, chairs, tables and 2 beds.	• Ditto.	Khásámah, bhishiti & sweeper.	Water from a stream, and there is a bania's shop.
12	Varikha Kalán R. I. H.	1 room with bath-room, cook-house and out-house unfurnished.	Tahsildár, Sháhrig.	Nil.	Water obtainable from <i>kacha</i> wells, and supplies available in summer only.
13	Ziárat D. B.	... 4 rooms, 4 bath-rooms, cook-house and stables furnished.	Garrison Engineer, Loralai.	Khásámah, bhishiti, sweeper, for 6 months during summer.	Water from taps. During the summer months there are shops, and supplies are obtainable.
14	Ziárat P. W. I. B.	... 2 rooms, 1 dressing-room, 2 bath-rooms, stables and cook-house and servants' quarters.	Commanding Royal Engineer, Loralai.	Sweeper for 6 months.	Ditto. Allowed for Commanding Royal Engineer only on rent.
15	Zandra R. H.	... 2 rooms, 1 cook room and 2 servants' quarters without furniture.	Ditto.	• Nil.	
16	Chándia R. I. H.	... 1 room with bath-rooms and servants' quarters, furnished with 1 chair, 1 table and 1 bed.	Tahsildár, Sibi	Nil.	Water brackish but fairly good. Water is obtainable from <i>kacha</i> wells a mile distant when there are rains. Milk, eggs and fowls only can be obtained. Grain and <i>karbi</i> can be had for 50 horses.

TABLE XII.—TRAVELLERS' BUNGALOWS.—(contd.)

No.	Bungalow.	Accommodation.	Officer in charge.	Establishment.	REMARKS.
17	Gulu Shahr R. I. H. ...	1 room with bath-room, cook-house and stables, furnished with 1 chair, 1 table and 1 bed.	Tahsildár, Sibi ...	Nil.	Water from a <i>nullah</i> close by. Supplies of all kinds for 50 men and 25 horses can be had without notice.
18	Khajak R. I. H. ...	1 room with bath-room and stables, furnished with 1 chair, 1 table and 1 bed.	Ditto.	Nil.	Water from <i>nullah</i> close by. Supplies of all kinds for 50 men and 50 horses can be had without notice.
19	Kurk R. I. H. ...	1 room with bath-room ...	Ditto.	Nil.	Water from a <i>nullah</i> close by. Supplies of all kinds for 50 men and 25 horses can be had without notice.
20	Mall R. I. H. ...	1 room with bath-room and stable furnished with 1 chair, 1 table and 1 bed.	Ditto.	Nil.	Water from a <i>band</i> , brackish. Supplies from the village close by for 50 men and 50 horses.
21	Mizri R. I. H. ...	1 room with bath-room unfurnished.	Ditto.	Nil.	Water from a <i>nullah</i> close by. Supplies of all kinds for 20 men and 20 horses can be had without notice.

BALUCHISTÁN DISTRICT.
GAZETTEER SERIES.

Sibi District.

22	Quat R. I. H.	...A room with bath-room and stables, furnished with 1 chair, 1 table and 1 bed.	• Ditto.	Nil.	Ditto	ditto
23	Singán R. I. H.	...A room with bath-room and cook-house. Furnished with 1 chair, one table and 1 bed.	• Ditto.	Nil.	Water from a <i>mullah</i> close by, and supplies for 50 men and 50 horses.	
24	Talli R. I. H.	...1 room with bath-room, cook-house and latrine, furnished with 1 chair, 1 table and 1 bed.	• Ditto.	Nil.	Water brackish, but fairly good. Water is procurable from wells within one mile. Ordinary articles of food are available for 50 men and 50 horses.	
25	Sibi D. B.	...3 rooms with 2 dressing rooms, 5 bath-rooms, furnished.	Garrison Engineer, Loralai.	Khánsama, 1 bhishti, 1 sweeper.	Bazar for supplies within 100 yards.	
26	Sibi P. W. I. B.	...4 rooms, 3 dressing rooms, 4 bath-rooms.	Ditto.	Sweeper, chaukidár.	Rentable building. Used by Military Works officers.	
C. Kohlu Tahsil.						
27	Zaran R. I. H.	...1 room with bath-room and cook-house.	Náib Tahsildár, Kohlu.	Nil.	Water procurable from spring in the river bed near by. Supplies not procurable, but can be obtained through the Náib Tahsildár, Kohlu. The nearest place from which supplies are obtainable is Koté shahr, 16 miles.	
28	Kohlu R. H.	...1 room with bath-room furnished with 1 table, chair and 1 bed.	Ditto.	Nil.	Water from a pipe. Supplies can be had on previous notice.	

BALUCHISTÁN DISTRICT.
GAZETTEER SERIES.

61

Sibi District.

Kohlu tahsil.	Total	18	7	5	8	42	46	24	29	0	30	1	29
	Original	17	4	5	9	38	37	22	26	6	26	1	29
	Execution of de- crees.	1	3	...	...	4	9	2	3	3	4	...	...
Duki tahsil.	Total	60	56	90	85	81	106	74	90	62	82	...	...
	Original	48	52	63	66	55	81	59	64	38	59	...	...
	Execution of de- crees.	12	4	27	19	26	25	15	26	24	23	...	...
Sanjāwi tahsil.	Total	52	38	72	60	62	30	17	44	31	37	...	...
	Original	34	36	62	50	44	23	10	30	18	25	...	...
	Execution of de- crees.	18	2	10	10	18	7	7	14	13	12	...	...
Shāhrig tahsil.	Total	180	322	212	158	88	149	192	174	97	140	34	112
	Original	127	258	151	119	62	116	147	134	63	104	16	90
	Execution of de- crees.	53	64	58	39	26	33	45	40	34	36	18	22
Sibi tahsil.	Total	1,499	1,301	1,326	997	1,072	1,281	1,294	1,501	1,460	1,322	1,137	972
	Original	674	848	893	630	651	748	730	732	733	719	610	449
	Execution of de- crees.	338	453	433	367	421	533	564	769	727	603	527	423
Vasirābād tahsil.	Total	...	...	...	...	...	...	...	...	...	...	...	...
	Original	...	...	...	...	...	...	...	...	...	...	...	...
	Execution of de- crees.	...	...	...	...	...	...	...	...	...	...	...	...

Note.—The figures under "District Totals," "District Judge" and "Sub-Divisional Courts" from 1892-3, represent the old District of Thal Chotiali.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District

TABLE XIII.—CIVIL SUITS DISPOSED OF DURING THE SEVEN YEARS ENDING WITH MARCH 31, 1912.

Court.	Nature of cases.	Number of cases disposed of during						
		1905-06.	1906-07.	1907-08.	Mean for quinquennial period.	1908-09.	1909-10.	1911-12.
District Totals.	Total							
	Original							
	Appellate							
	Execution of decrees...							
District Judge.	Total							
	Original							
	Appellate							
	Execution of decrees...							
Sub- Divisional Courts.	Total							
	Original							
	Appellate							
	Execution of decrees...							
Tahsils Courts Total.	Total							
	Original							
	Execution of decrees							
Sháhrig tahsil.	Total							
	Original							
	Execution of decrees...							
Sibi tahsil.	Total							
	Original							
	Execution of decrees...							
Kohlu tahsil.	Total							
	Original... ..							
	Execution of decrees...							
Nasirábád tahsil.	Total							
	Original... ..							
	Execution of decrees...							

TABLE XIV.—CRIMINAL CASES DISPOSED OF DURING THE 12 YEARS ENDING WITH MARCH 31, 1905.

Courts.	Nature of cases.	Number of cases disposed of during										
		1893-4.	1894-5.	1895-6.	1896-7.	1897-8.	Mean for the quinquennial period ending March 1898.	1898-9.	1899-1900.	1900-1.	1901-2.	1902-3.
District Total	{ Total	690	623	574	506	497	578	595	544	427	342	304
	{ Appellate ...	37	23	12	18	16	21	15	13	13	11	11
	{ Original ...	653	600	562	488	481	557	580	531	414	331	293
District Court	{ Total	14	13	21	17	12	15	17	16	13	13	15
	{ Appellate ...	7	11	8	10	6	8	11	7	6	7	9
	{ Original ...	7	2	13	7	6	7	6	9	7	6	6
Sub-Divisional Courts	{ Total	191	136	128	95	106	151	117	122	120	61	70
	{ Appellate ...	30	12	4	8	10	13	4	6	7	4	2
	{ Original ...	161	224	124	87	96	138	113	116	113	57	68
Lower Courts	{ Total Original	485	374	425	394	379	412	491	406	294	268	219
	{ Total Original	52	31	36	55	42	44	46	55	20	29	32
	{ Do. ...	...	...	...	1	9	3	14	16	18	7	4
Barkhán tahsil	{ Do. ...	19	26	20	38	27	26	35	24	22	16	5
	{ Do. ...	74	24	19	36	57	42	49	31	14	11	7
	{ Do. ...	130	91	101	74	48	89	66	61	51	45	37
Shahrig tahsil	{ Do. ...	210	197	248	190	196	208	257	219	169	160	144
	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
Sibi tahsil	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
Nasirabad tahsil	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...
	{ Do. ...	...	...	...	...	...	...	...	...	...	...	...

Note.—The figures under District Total, District Court and Sub-Divisional Courts from 1893-4 to 1902-3, represent the old District of Thal Chotiali.

BALUCHISTÁN DISTRICT.
GAZETTEER SERIES.

Sibi District.

TABLE XIV.—CRIMINAL CASES DISPOSED OF DURING THE 7 YEARS ENDING WITH MARCH 31, 1912.

Courts.	Nature of cases.	Number of cases disposed of during					
		1905-6, 1906-7, 1907-8.	Mean for the quinquennial period end- ing 1908.	1908-9, 1909-10.	1910-11.	1911-12.	
District Total ...	{ Total Appellate ... Original ...	...	...	...	...	...	...
District Court ...	{ Total Appellate ... Original ...	...	...	...	...	...	...
Sub-Divisional Courts ...	{ Total Appellate ... Original ...	...	...	...	...	...	...
Lower Courts ...	Total (Original)	...	...	...	...	...	...
Shāhrig tahsíl ...	Total (Original)	...	...	...	...	...	...
Sibi tahsíl ...	Do. (do.)	...	...	...	...	...	...
Kohlu tahsíl ...	Do. (do.)	...	...	...	...	...	...
Nasrábád tahsíl ...	Do. (do.)	...	...	...	...	...	...

TABLE XV.—NUMBER AND CLASSIFICATION OF POLITICAL CASES TRIED BY JIRGAS.

Cases decided.	Number of Cases disposed of during										REMARKS.			
	1893-4	1894-5	1895-6	1896-7	1897-8	Mean for quinquennial period.	1898-9	1899-1900	1900-1	1901-2		1902-3	Mean for quinquennial period.	1903-4	1904-5
District Total	449	349	371	303	374	369	292	888	1,100	933	1,062	855	645	624
Shahi Jirgas	64	99	127	90	153	107	132	137	129	105	105	122	67	35
Local Jirgas	220	147	121	135	73	137	83	169	248	434	458	278	489	524
Fort Munro Jirga	165	103	123	88	148	125	77	183	228†	261	266‡	203	39	61
Marri Bugti Jirga...	...	...	...	...	...	...	...	399	495	133	233	252	50	4
183														183
Classification of Cases—														
Murder	18	8	14	17	18	15	17	25	20	36	26	25	17	9
Robbery	4	5	14	12	17	10	19	47	27	44	9	29	7	46
Adultery	48	40	58	37	30	43	20	38	62	38	36	39	24	38
Adultery with Murder...	14	6	5	1	...	5	2	3	5	4	9	5	15	24
Cattle Lifting	36	107	34	49	29	51	47	93	102	229	205	135	183	212
Land and Revenue	10	22	21	21	43	23	39	31	48	41	68	45	56	49
Betrothal & others con-														
nected with marriage	16	18	38	20	19	22	23	27	18	16	47	26	26	261
Miscellaneous	65	69	94	78	93	80	52	95	148	205	284	157	235	238
Rioting	...	...	1	2	12	3	...	...	...	...	...	...	...	...
Marri and Bugti Cases...	...	...	...	...	...	...	...	399	495	133	233	252	50	4
Inter-Provincial } with Sind	3	1	1	2	...	2	...	...	...	...	...	...	...	...
cases	235	73	91	64	113	115	73	130	174	187	145	142	32	29
19														19
266														266

NOTE.—The figures from 1893-4 to 1902-3 represent the old District of Thal Chotiali.

TABLE XV.—NUMBER AND CLASSIFICATION OF POLITICAL CASES TRIED BY JIRGAS. .

[illegible]

TABLE XVI.

Registration Work.

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

TABLE XVI.—REGISTRATION WORK

YEAR.	SIBI DISTRICT.						SHÁHRIG TAHSÍL.											
	DOCUMENTS REGISTERED.			Total realizations including copying fees.	Total expenditure.	Number of offices.	DOCUMENTS REGISTERED.			Total realizations including copying fees.	Total expenditure.	Number of offices.						
	Compulsory.	Optional.					Compulsory.	Optional.										
		Relating to immoveable property.	Others.					Relating to immoveable property.	Others.									
				Rs. a.	Rs. a. p.					Rs. a.	Rs. a. p.							
1893-4	45	1	84	314	0	134	8	0	4	6	..	10	33	0	16	8	0	1
1894-5	34	..	96	288	8	144	4	0	4	1	..	28	61	8	30	1	0	1
1895-6	30	..	60	175	0	87	8	0	4	4	..	17	20	0	14	8	0	1
1896-7	33	..	67	221	8	110	12	0	4	2	..	13	28	8	14	4	0	1
1897-8	34	1	37	134	8	81	4	0	4	3	..	7	22	8	11	4	0	1
1898-9	42	2	39	214	0	107	0	0	4	3	1	15	51	8	25	12	0	2
1899-1900 ..	68	1	38	277	0	146	0	0	4	1	1	4	22	0	11	0	0	1
1900-1	62	3	26	261	8	130	12	0	4	3	1	2	15	0	7	8	0	1
1901-2	37	2	23	177	8	88	12	0	4	..	..	3	5	8	2	12	0	1
1902-3	52	2	30	244	8	120	0	0	4	2	..	1	7	8	1	8	0	1
1903-4	59	5	35	24	0	132	8	0	5	7	..	4	28	0	17	8	0	1
1904-5	64	8	16	273	4	142	1	9	5	6	..	..	18	0	5	14	9	1

Sibi District.

DONE DURING THE YEARS 1893-94 TO 1904-05.

SIBI TAHSIL.					KOHLU TAHSIL.					NASIRABAD TAHSIL.					
DOCUMENTS REGISTERED.			Total realizations including copying fees.	Total expenditure.	DOCUMENTS REGISTERED.			Total realizations including copying fees.	Total expenditure.	DOCUMENTS REGISTERED.			Total realizations including copying fees.	Total expenditure.	Number of offices.
Compulsory.	Optional.	Others.			Compulsory.	Optional.	Others.			Compulsory.	Optional.	Others.			
Relating to immoveable property.			Relating to immoveable property.			Relating to immoveable property.									
Number of offices.			Number of offices.			Number of offices.									
Rs. a.			Rs. a.			Rs. a.									
34	1	74	281 0	118 0	2	..	..	..	..	1	..	..	..	..	..
37	..	68	227 0	113 8	2	..	..	..	..	1	..	..	..	..	..
20	..	43	146 0	73 0	2	..	..	..	..	1	..	..	..	..	..
31	..	54	193 0	96 8	2	..	..	..	..	1	..	..	..	..	..
31	1	30	162 0	70 0	2	..	..	..	..	1	..	..	..	..	..
39	1	24	162 8	81 4	2	..	..	..	..	1	..	..	..	..	..
64	..	34	27 0	132 0	2	..	..	..	..	1	..	..	..	..	..
59	2	24	246 8	123 4	2	..	..	..	..	1	..	..	..	..	..
37	2	20	172 0	86 0	2	..	..	..	..	1	..	..	..	..	..
50	2	20	237 0	118 8	2	..	..	..	..	1	..	..	..	..	..
52	5	31	213 0	115 0	2	..	..	..	..	1	..	..	..	..	1
46	5	13	179 12	102 10	2	..	2	2 13 4	3 0 1	12	1	1	62 4	30 9	1

	SIBI DISTRICT.	SHÁHRIG TAHSÍL.
YEARS.	DOCUMENTS REGISTERED. Optional. Compulsory. Total realizations including copying fees. Total expenditure. Number of offices.	DOCUMENTS REGISTERED. Optional. Compulsory. Total realizations including copying fees. Total expenditure. Number of offices.
1905-06		
1906-07		
1907-08		
1908-09		
1909-10		
1910-11		
1911 12		

TABLE XVII.—REVENUE RECEIPTS FOR THE YEARS
1897-98 TO 1904-05.

YEARS.	Total revenue from all sources.	Land revenue.	Excise.	Stamps.	Other sources.
Sibi District (c)—	Rs.	Rs.	Rs.	Rs.	Rs.
1897-98	2,21,622	1,82,481	16,063	8,687	14,391
1898-99	1,72,076	1,35,684	13,350	9,108	13,954
1899-1900	1,40,170	1,06,828	10,485	10,530	12,327
1900-01	1,70,736	1,41,612	11,485	7,980	9,659
1901-02	1,53,795	1,24,431	9,587	7,795	11,982
Average for quinquennial period	1,71,680	1,38,204	12,194	8,820	12,462
1902-03	1,62,841	1,31,515	12,899	8,499	9,928
1903-04	2,33,002	1,96,932	15,498	7,640	12,932
1904-05	2,98,623	2,37,957	25,288	11,542	23,836
1. Sháhrig tahsil—					
1897-98	35,394	30,632	2,098	1,466	1,198
1898-99	39,109	34,840	1,735	1,194	1,340
1899-1900	32,635	29,363	1,384	1,131	757
1900-01	29,858	26,051	1,573	1,242	990
1901-02	35,890	30,581	1,275	963	3,071
Average for quinquennial period	34,577	30,294	1,613	1,199	1,474
1902-03	32,339	28,151	1,346	1,074	1,768
1903-04	32,819	28,872	634	895	3,018
1904-05	33,958	27,332	4,841	1,133	1,152
2. Sibi tahsil—					
1897-98	1,78,102	1,43,798	13,965	7,221	13,118
1898-99	1,18,352	86,899	11,615	7,914	11,924
1899-1900	1,03,137	73,511	9,101	9,399	11,126
1900-01	1,34,039	1,08,906	9,910	6,738	8,485
1901-02	1,05,547	81,897	8,312	6,832	8,506
Average for quinquennial period	1,27,836	99,002	10,581	7,621	10,632
1902-03	1,16,800	90,339	11,553	7,425	7,483
1903-04	1,40,989	1,11,471	13,693	6,669	9,156
1904-05	81,457	42,808	13,291	6,954	18,404
3. Kohlu tahsil—					
1897-98	8,126	8,051	a	a	75
1898-99	14,615	13,925	a	a	690
1899-1900	4,398	3,954	a	a	444
1900-01	6,839	6,655	a	a	184
1901-02	12,358	11,953	a	a	405
Average for quinquennial period	9,267	8,908	a	a	369
1902-03	13,702	13,025	a	a	677
1903-04	14,678	14,154	a	71	453
1904-05	13,070	12,122	60	173	715
4. Nasirábád tahsil—					
1903-04	44,516	42,435	1,771	5	305
1904-05	1,70,138	1,55,695	7,596	3,282	3,565

See note on opposite page.

a Included in the account of the Bārkhān tahsīl. Separate figures not available.

b The receipts on account of country liquor and intoxicating drugs included in the account of Sibi tahsīl.

c The statement does not include the following sums credited into the Quetta Treasury, which could not be distributed over the various tahsīls :—

		Total.	Assessed taxes.	Miscel- laneous.	Civil works
		Rs.	Rs.	Rs.	Rs.
1897-98	...	468	...	468	...
1898-99	...	3,420	1,753	128	1,539
1899-1900	...	3,520	1,873	201	1,446
1900-01	...	3,677	2,107	10	1,560
1901-02	...	3,520	2,009	201	1,310
1902-03	...	2,276	2,040	236	...

BALUCHISTAN DISTRICT.Sibi District.GAZETTEER SERIES.

TABLE XVII.—REVENUE RECEIPTS FOR THE YEARS
1905-06 TO 1911-12.

YEARS.	Total revenue from all sources	Land revenue.	Excise.	Stamps.	Other sources.
	Rs.	Rs.	Rs.	Rs.	Rs.
Sibi District—					
1905-06					
1906-07					
Average for quinquennial period					
1907-08					
1908-09					
1909-10					
1910-11					
1911-12					
Average for quinquennial period					
1. Sháhrig Tahsíl—					
1905-06					
1906-07					
Average for quinquennial period					
1907-08					
1908-09					
1909-10					
1910-11					
1911-12					
Average for quinquennial period					
2. Sibi Tahsíl—					
1905-06					
1906-07					
Average for quinquennial period					
1907-08					
1908-09					
1909-10					
1910-11					
1911-12					
Average for quinquennial period					
3. Kohlu Tahsíl—					
1905-06					
1906-07					

BALUCHISTÁN DISTRICT.Sibi District.GAZETTEER SERIES.

TABLE XVII.—REVENUE RECEIPTS FOR THE YEARS
1905-06 TO 1911-12.

YEARS.	Total revenue from all sources.	Land revenue.	Excise.	Stamps.	Other sources.
	Rs.	Rs.	Rs.	Rs.	Rs.
Average for quinquennial period					
1907-08					
1908-09					
1909-10					
1910-11					
1911-12					
Average for quinquennial period					
4. Nasirábád Taluk—					
1905-06					
1906-07					
Average for quinquennial period					
1907-08					
1908-09					
1909-10					
1910-11					
1911-12					
Average for quinquennial period					

BALUCHISTAN DISTRICT.
GAZETTEER SERIES.

Sibi District.

TABLE XVIII.—LAND REVENUE REALIZED IN KIND FROM PRINCIPAL CROPS DURING THE YEARS 1897-98 TO 1904-05.

RABI CROPS.

Tahsil, etc.	Year.	WHEAT.			SARSHAF.			TOBACCO.			BILSA.			BARLEY.		
		Maunds.	Average rate per maund at which sold.	Rs.	Maunds.	Average rate per maund at which sold.	Rs.	Maunds.	Average rate per maund at which sold.	Rs.	Maunds.	Average rate per maund at which sold.	Rs.	Maunds.	Average rate per maund at which sold.	Rs.
Sibi District	1897-98	29,749	3 2 0	92,893	331	3 14 9	1,425	16,544	0 04	21,164	0 3 0	4,648	279	2 7 6	689	
	1898-99	25,060	2 7 11	65,060	1,168	2 5 0	2,592	11,510	0 60	23,337	0 2 0	3,328	223	1 6 7	345	
	1899-1900	23,438	2 4 0	52,830	..	..	..	11,520	0 58	23,861	0 2 7	3,883	238	1 4 11	376	
	1900-01	16,928	3 3 10	54,859	..	..	..	11,515	0 56	17,309	0 5 11	5,339	201	2 0 0	763	
	1901-02	27,407	2 2 6	59,071	2,046	2 7 3	5,018	8 0 0	23	23,058	0 3 1	5,439	594	1 5 8	804	
	Quinquennial average	24,776	2 10 1	64,952	718	2 9 0	1,841	10,512	0 58	24,312	0 3 2	4,737	316	1 12 1	589	
	1902-03	16,905	2 8 3	40,304	8	2 10 0	21	6 5 4	0 30	16,168	0 5 0	5,135	71	1 12 7	137	
	1903-04	25,364	2 7 7	62,753	825	2 0 0	1,649	14 5 11	0 80	25,635	0 5 0	7,563	175	1 11 11	327	
	1904-05	25,071	1 14 3	47,418	256	2 0 0	516	21 6 4	0 132	29,238	0 2 0	3,170	262	1 2 6	234	

RABI CROPS.

Tahsil, etc.	Year.	WHEAT	SARSHAH.	TOBACCO	BHUJA.	BARLEY.
		Mauuds. Average rate per maund at which sold.	Value.	Mauuds. Average rate per maund at which sold.	Value.	Mauuds. Average rate per maund at which sold.
Sibi District	1905-06					
	1906-07					
	Quinquennial average					
	1907-08					
	1908-09					
	1909-10					
	1910-11					
	1911-12					
	Quinquennial average					

BALUCHISTÁN DISTRICT
GAZETTEER SERIES.

Sibi District.

Sibi Tahsil ..	1905-06 ..	
	1906-07 ..	
	Quinquennial average..	
	1907-08 ..	
	1908-09 ..	
	1909-10 ..	
	1910-11 ..	
	1911-12 ..	
	Quinquennial average..	
Kohlu Tahsil	1905-06 ..	
	1906-07 ..	
	Quinquennial average..	
	1907-08 ..	
	1908-09 ..	
	1909-10 ..	
	1910-11 ..	
	1911-12 ..	
	Quinquennial average..	

BALUCHISTÁN DISTRICT

GAZETTEER SERIES.

TABLE XVIII.—LAND REVENUE REALIZED IN KIND FROM
ENDING WITH MARCH 31ST, 1902, AND

KHARIF

Tahsil, &c.	Year.	Juar.			Mung.		
		Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.
Sibi District ..	1897-98 ..	20,647	R. a. p. 1 15 3	40,369	88	R. a. p. 4 0 7	355
	1898-99 ..	15,796	1 2 0	17,711	1,530	1 15 3	1,990
	1899-1900 ..	7,427	2 7 1	18,118	9	3 8 11	32
	1900-01 ..	22,026	1 12 2	38,831	27	3 3 0	86
	1901-02 ..	10,172	1 5 6	13,618	452	2 15 11	1,354
	Quinquennial average ..	15,214	1 11 1	25,761	421	2 4 8	964
	1902-03 ..	25,027	1 6 11	37,348	1,095	3 0 42	5,088
	1903-04 ..	25,009	1 8 6	38,390	1,697	2 7 6	4,190
	1904-05 ..	6,876	1 8 6	10,544	6	2 0 0	12
	Quinquennial average ..	65	1 3 5	80	..	..	..
Sháhrig Tahsil ..	1897-98 ..	5	2 8 0	12	..	..	..
	1898-99 ..	42	1 4 0	53	..	..	..
	1899-1900 ..	..	..	..	..	..	..
	1900-01 ..	75	1 11 11	130	..	..	..
	1901-02 ..	207	1 0 0	207	..	..	..
	Quinquennial average ..	65	1 3 5	80	..	..	..
	1902-03 ..	139	1 2 4	159	..	..	..
	1903-04 ..	325	1 2 3	371	..	2 13 5	1
	1904-05 ..	4	2 0 0	9	..	..	..

• Miscellaneous crops contain *bajra*.

Sibi District.

PRINCIPAL CROPS DURING THE QUINQUENNIAL PERIOD
DURING 1902-03, 1903-04 AND 1904-05.

CROPS.

Cotton.			Karbi			Sháli.			Makki.			Miscellaneous Crops.		
Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.
Rs. a. p.	Rs.		Rs. a. p.	Rs.		Rs. a. p.	Rs.		Rs. a. p.	Rs.		Rs.	Rs.	
50	1 12 9	91	20,783	0 0 9	072	..	..	..	27	2 8 0	67	153	..	355
36	1 8 0	55	15,868	0 0 9	743	750	0 14 6	681	26	1 5 6	35	179	..	295
63	2 10 0	166	7,523	0 0 10	378	549	2 0 1	1,100	5	2 0 0	9	51	..	161
368	1 9 6	584	2,184	0 0 10	1,103	605	1 7 1	1,004	2	2 15 6	7	356	..	650
40	1 14 6	91	10,376	0 0 9	490	462	0 10 0	289	42	1 4 6	54	309	..	486
113	1 11 11	197	15,359	0 0 9	737	491	1 4 0	014	20	1 11 2	34	210	..	301
125	2 5 0	244	25,335	0 1 0	1,706	694	1 4 3	878	36	1 9 9	58	519	..	929
118	1 10 6	195	25,504	0 1 0	1,631	521	1 5 11	714	46	1 8 8	71	233	..	330
109	3 0 0	328	7,059	0 1 0	444	3	1 3 0	4	14	2 6 10	34	19	..	33
..	..	..	5	0 1 0	..	..	..	..	27	2 8 0	67	..	..	..
..	..	..	42	0 0 6	1	..	..	..	26	1 5 6	35	..	..	..
..	..	..	5	0 0 6	..	0	1 8 0	13	5	2 0 0	0	..	..	..
..	..	..	77	0 0 7	3	..	..	..	2	2 15 6	7	1	..	4
..	..	..	249	0 0 6	8	..	..	..	42	1 4 6	54	..	..	..
..	..	..	76	0 0 5	2	2	1 8 0	3	20	1 11 2	24	..	..	..
..	..	..	175	0 0 6	6	..	..	..	36	1 0 9	58	..	..	..
..	..	..	371	0 0 6	12	..	..	..	46	1 8 8	71	29	..	33
..	..	..	18	0 1 9	2	..	..	..	14	2 6 10	34	..	..	..

china, and kangni in the Sháhig tahsil.

BALUCHISTAN DISTRICT

GAZETTEER SERIES.

TABLE XVIII.—LAND REVENUE REALIZED IN KIND FROM
ENDING WITH MARCH 31ST, 1902, AND

KHARIF

Tahsil, &c.	Year.	Juar.			Mung.		
		Maunds.	Average rate per maund at which sold.	Value	Maunds.	Average rate per maund at which sold.	Value.
Sibi Tahsil ..	1897-98 ..	20,121	1 15 5	30,494	86	4 1 0	348
	1898-99 ..	15,698	1 2 0	17,649	1,530	1 15 5	2,988
	1899-1900 ..	7,174	2 7 1	11,516	6	3 6 0	21
	1900-01 ..	21,176	1 12 3	37,393	13	3 8 0	49
	1901-02 ..	9,884	1 5 7	13,350	451	3 0 0	1,352
	Quinquennial Average ..	14,811	1 11 1	25,086	417	2 4 6	952
	1902-03 ..	24,963	1 5 11	35,909	1,094	3 0	5,982
	1903-04 ..	23,024	1 8 0	37,003	1,696	2 7 6	4,188
	1904-05 ..	6,818	1 8 7	10,459	5	2 2 6	10
	Quinquennial Average ..	14,811	1 11 1	25,086	417	2 4 6	952
Kohlu ..	1897-98 ..	521	1 10 0	863	2	3 0 0	7
	1898-99 ..	56	1 9 6	89	5	0 0 0	2
	1899-1900 ..	253	2 8 0	632	3	4 0 0	11
	1900-01 ..	775	1 12 0	1,308	13	2 12 0	37
	1901-02 ..	81	1 0 0	81	1	1 12 0	2
	Quinquennial Average ..	337	1 12 3	594	4	3 0 0	12
	1902-03 ..	925	1 6 0	1,272	2	2 3 0	5
	1903-04 ..	480	1 4 0	600	1	1 8 0	1
	1904-05 ..	48	1 5 6	64	1	2 4 0	2

* Miscellaneous crops contain *bajra*, *til*, *moth*,
Miscellaneous crops contain *bajra*, *china*,

Sibi District.

PRINCIPAL CROPS DURING THE QUINQUENNIAL PERIOD
DURING 1902-03, 1903-04 AND 1904-05—*contd.*

CROPS.

Cotton.			Kharif			Shali.			Makki.			Miscellaneous Crops.		
Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.	Maunds.	Average rate per maund at which sold.	Value.
	Rs. a. p.	Rs.		Rs. a. p.	Rs.		Rs. a. p.	Rs.		Rs.	Rs.		Rs.	Rs.
50	1 12 0	91	20,778	0 0 0	972	..	..	..	..	..	..	128	..	211
36	1 8 0	55	15,752	0 0 0	737	1 50 0	14 0	681	..	..	..	162	..	268
63	2 10 0	166	7,322	0 0 9	346	5 10 0	2 0 0	1,087	..	..	..	34	..	119
368	1 0 5	584	21,332	0 0 9	1,003	6 34 1	7 1 1	1,000	..	..	..	232	..	506
48	1 14 6	91	17,330	0 0 0	471	4 62 0	10 0 0	259	..	..	..	224	..	360
113	1 11 11	197	15,045	0 0 9	706	4 89 1	4 0 0	611	..	..	..	163	..	313
105	1 5 0	244	25,120	0 1 0	1,505	1 60 4	1 4 3	878	..	..	..	206	..	618
118	1 10 6	195	24,681	0 1 0	1,505	5 14 1	6 0 0	712	..	..	..	85	..	149
109	3 0 0	328	6,968	0 1 0	414	3 1 3	0 0	4	..	..	..	7	..	17
..	..	..	..	..	..	..	..	..	..	..	..	23	..	41
..	..	..	74	0 1 0	5	..	..	..	..	..	..	17	..	27
..	..	..	253	0 2 0	32	..	..	..	..	..	..	17	..	42
..	..	..	775	0 2 0	97	..	..	..	..	..	..	104	..	150
..	..	..	88	0 2 0	11	..	..	..	..	..	..	85	..	126
..	..	..	238	0 1 11	21	..	..	..	..	..	..	50	..	77
..	..	..	1,040	0 2 0	130	..	..	..	..	..	..	213	..	501
..	..	..	771	0 2 0	96	3 1 0	0 0	3	..	..	..	118	..	147
..	..	..	67	0 2 0	8	..	..	..	..	..	..	12	..	16

coriander seeds and *masur* in the Sibi tahsil.
sira and *moh* in the Kohlu tahsil.

TABLE XVIII.—LAND REVENUE REALIZED IN KIND FROM PRINCIPAL CROPS IN SIBI DISTRICT DURING THE QUIN QUENNIAL PERIOD ENDING WITH 31st MARCH 1902 AND DURING 1902-03, 1903-04, 1904-05.

KHARIF CROPS.

Tahsil.	Year.	Juar.			Mung.			Cotton.			Kharb.			Shall.			Manki.			Miscellaneous.*		
		Maunder	Average rate per maunder at which sold.	Value.	Maunder.	Average rate per maunder at which sold.	Value.	Maunder.	Average rate per maunder at which sold.	Value.	Maunder.	Average rate per maunder at which sold.	Value.	Maunder.	Average rate per maunder at which sold.	Value.	Maunder.	Average rate per maunder at which sold.	Value.	Maunder.	Average rate per maunder at which sold.	Value.
Nasirabad Tahsil ..	1903-04 ..	280	Rs. a.p. 1 7 9 416	..	..	..	..	..	..	..	281	Rs. a.p. 0 1 0 16	..	..	..	..	..	..	..	1	Rs. a.p. 1 1 10 0	..
	1904-05 ..	6	2 0 0 12	..	..	..	..	..	..	..	6	0 1 0 ..	..	..	..	..	..	..	..	..	..	..

Miscellaneous crops contain *bajra* in the Nasirabad tahsil.

GAZETTEER SERIES.

TABLE XVIII. - LAND REVENUE REALIZED IN KIND FROM THE PRINCIPAL CROPS DURING 1905-06 TO 1911-12.

[illegible]

BALUCHISTAN DISTRICT
GAZETTEER SERIES.

Sibi District

Shahrig Tahsil...	1905-06 ..	
	1906-07 ..	
	Quinquennial average ..	
	1907-08 ..	
	1908-09 ..	
	1909-10 ..	
	1910-11 ..	
	1911-12 ..	
	Quinquennial average ..	
	1905-06 ..	
Sibi Tahsil ..	1906-07 ..	
	Quinquennial average ..	
	1907-08 ..	
	1908-09 ..	
	1909-10 ..	

GAZETTEER SERIES.

TABLE XVIII.—LAND REVENUE REALIZED IN KIND FROM THE PRINCIPAL CROPS DURING 1905 06 TO 1911-12—*continued*

[illegible]

BALUCHISTÁN DISTRICT

Sibi District.

GAZETTEER SERIES.

TABLE XIX.—LAND REVENUE REALIZED IN CASH AND KIND DURING 1897-98 TO 1904-05.

No.	NAME OF TAHSIL.	Total annual land revenue from all sources.	Rs.	Rs.	Value of revenue collected in kind.	Cash assessment under regular settlement.	Rs.	Cash assessment by temporary contracts.	Rs.	Miscellaneous land revenue.	Rs.	Grazing Tax.		Areas recovered.
												From settled inhabitants.	From nomads.	
1	Sibi District—													
	1897-98	1,82,481	1,42,027	...	20,020	3,957	12,785	3,692	...	...	...	...	...	...
	1898-99	1,35,664	94,054	...	22,116	2,372	13,437	2,589	1,096	...	...	...	...	...
	1899-1900	1,06,828	72,845	...	21,562	2,016	7,914	2,477	14	...	...	...	...	...
	1900-01	1,41,612	1,04,373	...	21,714	2,505	7,295	1,484	4,241	...	...	...	...	...
	1901-02	1,24,431	86,765	19,708	2,034	1,459	12,125	2,251	89	...	...	...	...	...
	Average for quinquennial period	1,38,204	1,00,013	3,942	17,483	2,462	10,712	2,498	1,088	...	...	...	...	...
	1902-03	1,31,515	92,763	19,623	2,125	1,766	8,844	6,494	...	...	...	...	...	...
	1903-04	1,96,832	1,17,853	19,661	44,453	2,052	10,103	2,807	...	...	...	...	...	...
	1904-05	2,37,957	46,143	19,647	1,24,846	2,005	10,072	2,371	32,873	...	...	...	...	...
2	Sháhrig Tahsil—													
	1897-98	30,632	2,593	...	19,320	469	6,575	1,075	...	...	...	...	...	...
	1898-99	34,840	4,400	...	20,846	620	7,320	550	1,096	...	...	...	...	...
	1899-1900	29,363	978	...	20,232	349	6,574	1,170	...	...	...	...	...	...
	1900-01	26,051	386	...	19,704	279	5,002	680	...	...	...	...	...	...
	1901-02	30,581	4,921	19,708	...	367	4,966	619	...	...	...	...	...	...
	Average for quinquennial period	30,294	2,656	3,942	16,072	417	6,168	820	219	...	...	...	...	...
	1902-03	28,151	877	19,623	...	480	3,677	494	...	...	...	...	...	...
	1903-04	25,872	3,817	19,661	...	546	4,046	802	...	...	...	...	...	...
	1904-05	27,332	1,710	19,647	6	600	4,719	650	...	...	...	...	...	...

BALUCHISTÁN DISTRICT

GAZETTEER SERIES.

3	Sibi Tahsil—	1897-98	...	1,43,798	1,33,466	...	500	3,293	3,933	2,606	...
		1898-99	...	86,899	78,368	...	1,270	1,395	3,269	1,997	...
		1899-1900	...	73,511	68,254	...	1,270	1,326	1,340	1,307	...
		1900-01	...	1,08,966	798,616	...	2,010	1,850	2,070	804	3,556
		1901-02	...	81,897	45,171	...	2,034	912	2,090	1,601	89
	Average for quinquennial period	...	...	99,002	20,895	...	1,417	1,755	2,540	1,661	732
		1902-03	...	90,339	01,999	...	2,025	1,102	2,357	2,946	...
		1903-04	...	1,11,471	1,33,302	...	2,018	1,197	3,163	1,791	...
		1904-05	...	42,808	5,066	...	2,018	1,190	2,497	1,437	...
4	Kohlu Tahsil—	1897-98	...	8,031	5,968	...	...	195	1,877	11	...
		1898-99	...	13,925	10,686	...	...	357	2,848	34	...
		1899-1900	...	3,954	3,613	...	...	341	...	...	...
		1900-01	...	6,655	5,371	...	...	376	223	...	685
		1901-02	...	11,953	6,673	...	...	180	5,069	31	...
	Average for quinquennial period	...	...	8,968	6,462	...	...	290	2,004	15	137
		1902-03	...	13,025	9,977	...	...	184	2,810	54	...
		1903-04	...	14,154	10,737	...	...	303	2,801	214	...
		1904-05	...	12,122	8,767	...	...	215	2,856	284	...
5	Nasirabad Tahsil—	1903-04	...	42,435	...	...	42,435	...	...	...	...
		1904-05	...	1,55,695	...	...	1,22,822	...	...	...	32,873

Note 1.—The increase in the revenue of 1904-05 is largely due to the sum of Rs. 32,244-2-5 recovered by the Khan's officials for the *rahi* crops (1903) of the Nasirabad Tahsil, having been credited into the Government Treasury during 1904-05.

Note 2.—The sudden fall in the revenue of the Sibi tahsil for 1904-05 is due to the failure of the *Kharif* crops of the *Khanakaba* lands and to the suspension of certain items of Revenue.

Sibi District.

BALUCHISTÁN DISTRICTGAZETTEER SERIES.Sibi District.

3	Sibi Tahsil	...	...	...	...
	1905-06	...	...	...	...
	1906-07	...	...	...	...
	Average for quinquennial period	...	...	...	...
	1907-08	...	...	...	...
	1908-09	...	...	...	...
	1909-10	...	...	...	...
	1910-11	...	...	...	...
	1911-12	...	...	...	...
	Average for quinquennial period	...	...	...	...
4	Kohlu Tahsil	...	...	...	...
	1905-06	...	...	...	...
	1906-07	...	...	...	...
	Average for quinquennial period	...	...	...	...
	1907-08	...	...	...	...
	1908-09	...	...	...	...
	1909-10	...	...	...	...
	1910-11	...	...	...	...
	1911-12	...	...	...	...
	Average for quinquennial period	...	...	...	...
5	Nasirabad Tahsil	...	...	...	...
	1905-06	...	...	...	...
	1906-07	...	...	...	...
	Average for quinquennial period	...	...	...	...
	1907-08	...	...	...	...
	1908-09	...	...	...	...
	1909-10	...	...	...	...
	1910-11	...	...	...	...
	1911-12	...	...	...	...

TABLE XX.

Excise Revenue

BALUCHISTAN DISTRICT.
GAZETTEER SERIES.

TABLE XX.—EX

		REVE										
No.	ARTICLES.	1889-1890.	1890-91.	1891-92.	1892-93.	1893-94.	1894-95.	1895-96.	1896-97.	1897-98.		
			Rs.	Rs.	Rs.	Rs.	a. p.	Rs.	Rs.	Rs.	Rs.	a. p.
1	Opium	27,350	7,070	4,450	4,220	3,450	0 0	2,080	2,300	1,620	1,410	0 0
2	Poppy heads ..											
3	Ganja											
4	Charas											
5	Bhang											
6	Country liquors and rum ..	16,135	17,500	19,920	19,100	0 0	18,810	16,900	12,720	12,900	10 8	
7	Foreign liquors.	750	890	779	955	099	5 4	507	610	523	477	13 0
Total ..		28,149	24,095	25,580	28,875	26,609	5 4	24,397	23,010	18,158	17,078	7 8

* Information

NOTE 1.—The Excise Revenue for items 3 to 5 in column 1 for the years 1902-03 to 1904-05 includes

NOTE 2.—Shops were located for the sale of country liquors, opium,

Sibi tahsil at Sibi town, Khajuk, Kurk,

Sháhrig tahsil at Harnai, Nasak, Sháhrig, Khost,

Nasrábád tahsil at Jhatpat, Temple dera, Nuttall, Bellpat, Lindsay, Mithri,

NOTE 3.—The figures for the years 1889-90 to 1902-03 are for the old Thal Chotiáli

NOTE 4.—Excise revenue does not include realizations

Sibi District.

CISE REVENUE.

NUE.												No. of shops in 1904-05.	Consumption in 1904-05.	Incidence of consumption of principal articles on 1,000 of total population of places where shops are located.	Incidence of consumption of articles on 1,000 of total population of the District.	
1898-99.	1899-1900.			1900-01.		1901-02.		1902-03.		1903-04.						1904-05.
Rs.	Rs.	a.	p.	Rs.	Rs.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Mds. & ch.	M. & ch.
1,292	1,051	12	0	1,705	1,062	1,165	0	0	1,065	0	0	2,302	0	0	2 5 2	0 1 6
															1 10 15	
2,165	1,700	1	4	2,365	2,068	4,740	11	2	4,567	0	0	8,038	7	0	0 0 2	0 8 7
															15 20 12	1 17 13
10,425	8 4 7	13	4	8,460	7,070	7,785	0	0	9,020	13	4	14,505	0	0	106 12 5	
454	4 1	0	0	93	491	442	0	0	444	0	0	443	0	0	11	
14,846	11,682	10	8	12,523	10,691	14,132	11	2	15,496	13	4	25,288	7	0		

not available.

Rs. 2,460-11-2, 2,782 and 4,188-14, respectively, realized as duty in the Sibi bonded warehouse poppy heads and drugs at the following places during 1904-05: in the Gulushahr, Narigorge, Bábar Kach; in the Dugi, Mángi, Kach, Zíarat, Torkhán, Splintangi; in the Nasirábád Gandakha, Goth, Dur Muhammad, Usta, Sohbatpur and Manjhipur. District and those for 1903-04 and 1904-05 are for the new Sibi District, from fines and forfeitures under the Excise Act.

BALUCHISTAN DISTRICT.

Sibi District.

GAZETTEER SERIES.

TABLE XXI.—INCOME AND EXPENDITURE OF LOCAL FUNDS.

Heds.	Sibi Municipal Fund.					
	Actuals for 1905-06.	Actuals for 1906-07.	Actuals for 1907-08.	Actuals for 1908-09.	Actuals for 1909-10.	Actuals for 1910-11.
Total Income
1. Octroi
2. Tax on houses and lands
3. Other taxes...
4. Rents...
5. Loans...
6. Other sources
Total Expenditure
(1) Administration and collection of taxes.
(2) Public safety
(3) Water-supply—
(a) Capital
(b) Maintenance
(4) Conservancy
(5) Hospital and Dispensaries
(6) Public works
(7) Education
(8) Other heads...
(9) Repayment of loans
(10) Investment

BALUCHISTAN DISTRICT.

Sibi District.

GAZETTEER SERIES.

TABLE XXI.—INCOME AND EXPENDITURE OF LOCAL FUNDS

Head.	Shahrig Bazar Fund.				
	Actuals for 1935-36.	Actuals for 1936-37.	Actuals for 1937-38.	Actuals for 1938-39.	Actuals for 1939-40.
Total Income
Octroi
1. Tax on houses and lands
2. Other taxes
3. Rents
4. Loans
5. Other sources
Total Expenditure
Administration and collection of taxes.					
(1) Public safety
(2) Water-supply—					
(3) (a) Capital
(b) Maintenance
Conservancy
(4) Hospital and Dispensaries
(5) Public works
(6) Education
(7) Other heads
(8) Repayment of loans
(9) Investment
(10)					

GAZETTEER SERIES.

TABLE XXI — INCOME AND EXPENDITURE OF LOCAL FUNDS.

Heads.	Ziārat Improvement Fund.			
	Actuals for 1903-06.	Actuals for 1905-07.	Actuals for 1907-08.	Actuals for 1909-10.
				Actuals for 1911-12.
Total Income
1. Octroi
2. Tax on houses and lands
3. Other taxes
4. Rents
5. Loans
6. Other sources
Total Expenditure
(1) Administration and collection of taxes
(2) Public safety
(3) Water-supply—
(a) Capital
(b) Maintenance
(4) Conservancy
(5) Hospital and Dispensaries
(6) Public works
(7) Education
(8) Other heads
(9) Repayment of loans
(10) Investment

of the very lowest tribes,) for the payment of a sacrificial fee.⁽¹⁾

2. As to its defeasibility.—Of the slave born, of those acquired by purchase, by gift, or by inheritance, the servitude is permanent and hereditary, releasable by emancipation, or death only, the latter not being by the act of the slave; for, where it is, the suicide, according to the religious notions of the Natives, remains the slave of the same master in another birth;⁽²⁾ a fancy, that may serve to illustrate his hopeless condition in this life, from which, as it appears, he can by no means of his own escape. To this, however, there is an exception, where the life of the master, being in imminent peril, is saved by his slave; but with this qualification, that, to render such service a title to release, the exertion for the purpose must have been at the risk of the slave's own; for otherwise, it would be but in course, that he should do everything in his power to save his master's being in danger.⁽³⁾ Another exception is, where the owner, cohabiting with his slave girl, she bears him a son, he not having at the time any other, legitimate or adopted; in which case, she and her issue are enfranchised.⁽⁴⁾—And a humane provision denies to him, except in distress, the right to dispose of his female slave to another, she resisting the sale. Unless she have forfeited the benefit of it by her wickedness.⁽⁵⁾

(1) 2, Dig., 232.

(2) 2, Dig., 232.

(3) Nareda, 2, Dig., 241. *Wajnyawalcya*, Id., 243.

(4) *Catyayana*, 2, Dig., 244.

Vid. *tamī. Datt. Mim.*, sect. iv, 75, et seq.

(5) *Catyayana*, 2, Dig., 258, 259.

It is to be observed, however, that, in support of these propositions, the Southern Pundits, who have been consulted upon them, have no other authorities to refer to, than those furnished by Jagannatha, which are principally applicable to the Bengal Provinces; independent of which, it may be a question, whether, in the case of purchase, gift, or inheritance, the permanency of the slavery so created, may not depend on the original condition of the particular slave, as having been one beyond redemption, or not: so as to resolve itself into the proposition, that the slave by birth is the only irredeemable one. Of the rest, the slavery is, by various means, defeasible, independent of the will of the owner; the captive taken in war, the slave won at play and the one *self-given*, being redeemable, on finding a substitute.⁽¹⁾ With regard to the slave for a stipulated time, he ceases to be so, on the term of his servitude expiring;⁽²⁾ and he, whom love has enchained in a double captivity, becomes free again by discontinuing his commerce, and withdrawing from the object of his passion.⁽³⁾ For the remaining ones, whose bonds are not permanent, they may recover their freedom by payment, where their servitude is for a debt, or fine; by compensation, where it has been for maintenance.⁽⁴⁾ For, though the gains of a slave, while he continues so, vest in his owner; yet, if he be incapable by other means of property applicable to his redemption, he

(1) Nareda, 2, Dig., 246.—Daya Crama Sangraha, ch. XII, sect. ii.

(2) Nareda, 2, Dig., 245.—Id., p. 239.

(3) Nareda, 2, Dig., 247.

(4) Yajnyavalkya, 2, Dig., 245.—Nareda, 2, Dig., 243, 245.

Append. to ch. V, pp. 225 to 228.—C.

may at all events be redeemed by the aid of friends.⁽¹⁾ The slave pledged for debt remains the property of his original owner, redeemable till the time for payment be passed, when the property is altered, becoming vested in the mortgagee, in the nature of a slave bought; and, as such, irredeemable, if the title pledged was an absolute one.⁽²⁾ While the servitude continues, a slave quitting his owner may be reclaimed;⁽³⁾ and a text of Menu, confined indeed to the Sudra, is considered as warranting the position, that a slave, emancipated by his master, received by another, and emancipated by him, may be re-seized by his former owner; but this would be contrary to principle; and the fairer construction of it is the obvious one, that his emancipation leaves him still a Sudra, liable of course to all the duties of his class, being essentially servile.⁽⁴⁾ The form of manumission is, by the master taking a pot of water from his shoulder, and breaking it with appropriate ceremonies; upon which the slave becomes free.⁽⁵⁾

3. As to the dominion of the master; first, over the *property* of the slave; it is certain that the latter can acquire only for the benefit of his master; possessing his person, he possesses everything that can relate to it; nor can the slave have any property, that he can call his own, but by his master's consent.⁽⁶⁾ Secondly, with regard to his *person*; that the owner has the same

(1) Catyayana, 2, Dig., 252.—Colebr. on Obligations, p. 232.

(2) Nareda, 2, Dig., 245.—Post, Append. to ch. V, p. 226.—C.

(3) Nareda, 2, Dig., 237.—Post, Append. to ch. V, p. 229.—C.

(4) Menu, VIII, 413, 414.—2, Dig., 232, 238.

(5) Nareda, 2, Dig., 248.

(6) Menu, VIII, 416, 417.—Nareda, 2, Dig., 237, 249.
1, Dig., 16.—Catyayana, 2, Id., 252.

power of correcting his slave, that belongs to a master over his servant, is implied, for he is one of the most abject kind; and a runaway slave is reclaimable.⁽¹⁾ But, if a slave pledged refuse to work, complaint should be made to his owner, who must assign the pledgee another; such slave, while in the possession of the latter, not being liable to be beaten by him.⁽²⁾ That the master has power over his slave's life, nowhere appears; and here, construing "servant," in the text cited from Menu, to comprehend *slave*, that great legislator and Sir William Jones are agreed that, in the exercise of such power over him, as by law he has, it is at his peril, if it be immoderate, according to the consequences that may ensue.⁽³⁾ But, with the exception stated, it is competent to him to compel him by force, not being excessive, to do whatever work he orders him to perform; in which consists mainly the difference between a slave and a servant.⁽⁴⁾

(1) Nareda, 2, Dig., 237.—Ante, p. 116.

(2) Catyayana, 1, Dig., 153, and Comment.

(3) Menu, 2, Dig., 209.—Sir W. Jones's Charge, June 10, 1785.

(4) Nareda, 2, Dig., 222.—Vrihaspati, Id., 223.

CHAPTER. VI.

ON INHERITANCE.

HAVING, in the preceding chapters, discussed, at a length sufficiently proportioned (it is hoped) to their importance, a variety of subjects, all, in the primary view of them, distinct from those of *Inheritance* and *Contract*, it becomes time now to enter upon the former of these two; in doing which, it is to be remembered that the Hindus are a patriarchal people, many families often living together as one; connected in blood, and united in interests; with various relative dependents, to be provided for out of the aggregate fund; but subject always to separation, as well as to the exclusion of any one or more, from participation in the inheritance, for causes to be hereafter enumerated.

The inheritance having descended, such union of interests, among families living together, and carrying on their transactions in common, constitutes *coparcenary*, to which survivorship attaches, differing in this particular from coparcenary with us, and resembling rather joint tenancy; so that, on the death of a Hindu parcener, the succession to his rights, with exception of property separately acquired by him, vests in the other remaining members,—his sons, if he leave any, representing him as to his undivided rights, while the females of his family continue to depend on the aggregate fund, till a partition takes place, which may

never happen. But according to the law, as it prevails in Bengal, where an undivided coparcener dies, leaving a childless widow; his share does not vest in the surviving parceners, but descends to his widow, as his heir;⁽¹⁾ whereas, the Mitacshara restricts her right of inheriting to the case of her husband so dying separated; allowing her, where he dies undivided, a maintenance only.⁽²⁾ In every other case, universally, survivorship takes place, the remaining coparceners continuing to administer and enjoy the undivided property, as will appear in the chapter on Partition. In the present, the VIth, will be detailed succession to property, by *Inheritance*; to be followed, in the VIIth, with an account of the *disabilities* that exclude from; in the VIIIth, of the *charges*, to which it is liable: and, in the IXth, of the whole subject of *partition*;—reserving for the Xth, *Succession to a widow*, with other matters connected with the state of *widowhood*. These five chapters may be considered as exhibiting, in its fullest extent, though by way of outline only, the Hindu law of *Inheritance*. To these will be subjoined, for reasons to be assigned, a chapter (the XIth) on the *Testamentary* power; engrafted, as it has been by the King's Courts, on the Native law of Succession, notwithstanding the fact conceded, *that a Will is a mode of disposing of property, unknown to the Hindu*

1) Jim. Yah., ch. XI, sect. i, 7, 14, 46, and notes.
Beng. Rep., ante 1805, pp. 30, 48, 63, 91.

2) Mit. on Inh., ch. II, sect. i, 20, note.—Id., 31, note.
Beng. Rep., ante 1805, pp. 16, 29, 66.
Bombay Rep., p. 241

But see upon this point, Append. to ch. VIII, p. 297.—E

law.⁽¹⁾ After which, it will remain, only to discuss in a concluding one; (the XIIth,) the law of *contracts*; being the second of the two great subjects, specially reserved by the Royal Charters, to be adjudicated upon by their own law, in all cases of the kind, arising in the King's Courts, between native and native.

To begin with the subject of the present chapter. So intimate by the Hindu law is the connexion between the two subjects of *partition* in the life of the father, and *inheritance* upon his death, that they may be said almost to blend; since, not only upon his demise, but upon his renunciation of worldly concerns, with a view to the ending his days in devotion,⁽²⁾ or, after such an absence from his family as may justify the inference that, if not in fact dead,⁽³⁾ he has abdicated his temporal rights,⁽⁴⁾ the latter, *i. e.*, inheritance, in effect, by anticipation, as it were, attaches; as it does on his degradation for crime, unexpiated.⁽⁴⁾—the material difference between them, as concerns the objects, being, that, on *partition* by the father, he has a discretion with regard to property of his acquirement, in contradistinction to what had descended, to divide it among his sons in such shares, as they may respectively merit, or as circumstances may dictate, exercising it always, not arbitrarily, or capriciously; whereas what-

(1) Note to 2, Dig., 516.

(2) Post, p. 176.

(3) Post, p. 178.

(4) Post, p. 174.

[(a) The period of absence that raises the presumption of death is when, if the absentee is not above 30 years when missing, he is unheard of for 30 years; if between 30 and 60, for 15 years; and if above 60, for 12 years.—Str. Man. of H. law, p. 303.]

ever be the nature of that of which he dies possessed, he has, according to the doctrine of the Mitacshara, no power to regulate the *succession*, which the law, upon his death, vests equally in all.

Sons.—In the series, then, of a Hindu's heirs, the first, in order, is his male issue, legitimately *born*; or, in its default, its substitute and equivalent, a legally *adopted* son; what constitutes for this purpose one legally born, or legally adopted, having already been shown, under the respective heads of Marriage⁽¹⁾ and Adoption.⁽²⁾ By the ancient law, indeed, legitimacy, as well with reference to birth, as to filiation, had comparatively a very wide meaning. To what extent, in a stricter, or looser sense, it included sons *substituted*, may be seen in the Appendix to a former chapter;⁽³⁾ and, with regard to *issue*, if comprehended that of marriages, (not now in use,) in the direct order of the tribes, as well as of women espoused in any of the disapproved forms of marriage; such mixed and irregular progeny, though inferior in pretensions to the *Aurasa*, or legitimate son of a woman of the same class with her husband, married in one of the approved forms, being so far legally born, as to be entitled to succeed, in preference to a subsidiary son, of whatever description.⁽⁴⁾ But all such marriages having been long since forbidden,⁽⁵⁾ (howsoever they may in some parts of India still occur,) and, as between issue of the body, and

(1) Ante, ch. II, p. 23.

(2) Ante, ch. IV, p. 62.

(3) Post, Append. to ch. IV, p. 212.

(4) Note to Mit. on Inh., ch. I, sect. xi, § 2, and Id., § 40.

(5) 3, Dig., 485.

an adopted son, the law, as it respects inheritance, making no difference, except that the latter, being provided as a substitute, takes the entire estate only in default of the former, the subject will be treated with reference to the former only, namely, to issue legally begotten; the application holding good in general to both alike. The collective term *issue* comprehending not only as many sons as a man may chance to leave behind him, but sons' sons also, and the sons of the latter, or great-grandsons,⁽¹⁾ it may be here remarked, that though, in former times, the eldest had his privilege,⁽²⁾ the whole have, by the Hindu law, ever constituted but one heir;⁽³⁾ like heirs in *gavelkind* or the descent to females in default of heirs male, with us;—and that the doctrine of representation obtaining in it, if the son have died in the lifetime of his father, leaving a son, and that son also die, leaving one, and then the great-grandfather die, the great-grandson succeeds, as his grandfather would have done, had he survived; and, according to the *Vaijayanti*, (a commentary on Vishnu,) the right of representation, in all these cases, vests likewise in the widow:⁽³⁾ but according to other authorities, her claim, in such case, is to maintenance only, to be supplied her by her father-in-law, and, on his death, by his heir.⁽⁴⁾ But here, for a reason that will be presently given,⁽⁵⁾ the right of lineal representation stops, unless there have

(1) Menu, ch. IX, 137.—Datt, Mim., sect. i, 13.
Yajnyavalkya, 3, Dig., 63.

(2) Post, p. 183.

(3) Post, Append. to ch. VI, p. 234.—G.

(4) Post, Append. to ch. VI, p. 234.—C. 235.—S.

(5) Post, p. 117.

[(a) But if such be the custom of the country or family, an eldest son will succeed to the entire estate—(2, *Max. Erin. H. L.*, 17) such custom having the prescriptive force of law if prevalent during a long succession of ancestors.—I, *Mor. Dig.*, tit. *Inheritance*, Pl. 109.]

been an absence in a distant country, in which case it extends beyond the fourth, as far as the seventh degree;⁽¹⁾ so that, supposing the intermediate descendants to have failed, and a son of the great-grandson to survive at the death of the proprietor, he would not inherit, as he would with us, but the widow of the deceased, the next in the series, would succeed in preference; though, in the event of the great-grandson surviving his ancestor, and dying, the property so inherited by him would devolve upon his son, in consequence of its having vested in the father. Under the ancient law, the representative differed, in one instance, from him whom he represented; in that, if begotten by his uncle, according to a practice subsisting in early times,⁽²⁾ he did not, though standing in the place of an eldest son, succeed to the privileges of one, but was entitled to an equal share only with his co-heirs.⁽³⁾ But this, as most other anomalous modes of filiation, having, together with the rights of primogeniture, long since ceased,⁽⁴⁾ it is sufficient to have alluded to the circumstance; and, for the sake of clearness, and to avoid confusion, referring to the appropriate chapter for whatever regards the adopted son,⁽⁴⁾ what follows will proceed upon the supposition of the deceased having separated himself from, and become independent of brothers, if he had any—in other words, of his having died divided, or otherwise sole owner of what property he possessed; it being proposed to exhibit the succession

(1) Vrihaspati, 3, Dig., 441, 448.—Post, 178.

(2) Ante, p. 26.

(3) Menu, ch. IX, 120, 121.

(4) Ante, ch. IV, p. 62.

[^(a) Except in the case of regalities, &c.—*Mootoovengadachellasamy Monigär v. Toomlayasamy Monigär and others.*—Dec. of S. U., 1849, p. 27, and note, ante, p. 112.]

of heirs, commencing with an only son, or a legal representative of him, which is the same thing ; in the discussion of which, some comparison will incidentally occur, between the rules of inheritance according to the English law, and those that govern it among the Hindus ; but as, among the latter, the distinction, as it prevails in ours, between real and personal property, does not for this purpose, in general, exist,⁽¹⁾ both species being, with them, descendible to the legal heirs, their law of *inheritance*, including what, with us, forms the law of *administration*, embraces in this respect, a wider field ; comprehending every possible claimant on the property of a person deceased, as well as every description of property, of which, during his life, he was seized or possessed. On the other hand, as they apply to property, there is, in point of simplicity, no comparison between the two codes ; though it may be sometimes difficult, in that of the Hindus, to distinguish between what it exacts, and what it recommends, and expects only : as neither is it easy always to extract, with correctness and certainty, amid the involved and discordant reasonings of commentators on the subject, what the law upon any given point actually is, adverting moreover to the conflicting doctrine of different schools.⁽²⁾ To perform what would be requisite in these respects, effectually, as it would require the master-hand of a Jones, or a Colebrooke ; so will it be but very insufficiently supplied by the present imperfect Essay, at something like

- (1) Note to Jim. Vah., ch. XI, sect. v, 36.
Ante, ch. I, p. 3.
(2) Ante, Pref., p. xxviii.

arrangement and elucidation. Meanwhile, let the English enquirer be encouraged in his investigations by the assurance that, in pursuing them, he is relieved from much of the toil inherent in the study of the correspondent branch under his own law, as arising, with reference to real property, from the division of inheritances into different kinds, and the distinction of estates, as regarding the quantity of interest taken in them, with the doctrine of estates in expectancy; the whole of which together has, in the progress of centuries, given rise to a body of learning, in parts so nice and abstruse, and, upon the whole, so various and intricate, as to have occasioned often despair in the study of it; a branch of learning, in fact, to be acquired and retained, only by the most severe study, and uninterrupted practice. To return from this digression.

Before the subject of the present chapter can be properly understood, it is necessary to recollect the doctrine already alluded to, in treating on adoption, constituting, as has been observed by Sir William Jones,⁽¹⁾ the *key*, to the whole Indian law of inheritance, and ~~resting~~ ^{resting} with us, upon services to be performed by the heir;—not, however, upon feudal ones to be rendered to a superior, but, like *frankalmoigne* with us, upon spiritual ones, to be conferred on the deceased, in extricating his spirit from its otherwise hopeless state, by a due discharge of his funeral rites.⁽²⁾ Innumerable are the passages that have been collected from Hindu scripture, and heroic history, by writers on the

(1) Note to 3, Dig., p. 63.

(2) Jim. Vah., ch. XI, sect. vi, 29.
3, Dig., 355, 84, 491, 525, 623.

law of the subject in question, in which benefits derived by the father, or other ancestor, through the son, grandson, or great-grandson, are stated as reasons for the preferable right of the lineal male heir, to a certain extent, before any other claimant.⁽¹⁾ This faculty is, however foreign in reality to inheritance, the assumption of which (according to a learned writer) is to be resorted to, in order to give consistency to his rules ;⁽²⁾ and, how nicely the series of heirs is in general adjusted, with reference to the degree of benefit which each is, in this way, supposed capable of producing, is worthy of remark ; the son's preferable right resting on his presenting the greatest number of beneficial offerings,⁽³⁾ while the same degree is attributable, in default of their respective fathers, to the grandson or great-grandson, that is, as far as the fourth in descent, but not to any ulterior representative;—the fifth (says Menu)⁽⁴⁾ not having any concern with the funeral cake ; which accounts for representation, for the purpose of inheritance, stopping with the great-grandson ; while, upon this principal, ministering equally to the peace of their departed ancestor, if ~~(according~~ to an authority already cited) he leave a son, and the son of another son, and the son's son of a third son, they take equal shares of his estate, *because*

(1) Menu, ch. IX, 137.

(2) Mr. Colebrooke's Preface, p. 2, to his translation of the "Treatises on the Hindu law, of Inheritance."—See also Jim. Vah., ch. XI, sect. vi, 31, 33.

(3) Jim. Vah., ch. IV, sect. iii, 36.

(4) Menu, ch. IX, 186, 187, X.—Jim. Vah. ch. XI, sect. vi, 29, 31. Devala, 3, Dig., 10.

they confer the benefit equally.⁽¹⁾ This is the general, though not the sole and universal principle ;—payment of the deceased's debts, as well as nearness of kin,⁽²⁾ or proximity by birth, entering as conjoint considerations,⁽³⁾—the table of succession also, which, on failure of the great-grandson, devolves on the wife, reverting, after some deviations, to the lineal kindred, but stopping, at all events, with the seventh person, or in the sixth degree of ascent or descent.⁽⁴⁾ In what the rites alluded to consists, and by what operation this pious office of the heir is conceived likely to be efficacious toward effecting the desired end, it does not belong to these pages to notice.⁽⁵⁾ Sufficient be it here to state, that the right to inherit is connected with the power of benefiting ; whence the title of the son begotten, before that of any other possible heir ; with the anxiety of every reflecting Hindu for male issue,—together with the law of adoption, as a substitute for it. Upon this ground, passages in books, purporting that the succession to the estate, and the right of performing obsequies, go together, have sometimes led to extensions, founded upon the fact only of such celebration ; which, however, are not to be construed, as if the mere act of solemnizing the funeral rites could

(1) Sir W. Jones's note to 3, Dig., p. 63, and note to Jim. Vah., ch. XI, sect. i, 4, 34, 39, 40.—Id., sect. vi, 29.

(2) 3, Dig., 501.

(3) 3, Dig., 525, 533.

(4) Note to 3, Dig., 62.—Menu, ch. V, 60.
Jim. Vah., ch. XI, sect. i, 42.

(5) See Notes to 3, Dig., 460, 624.

Notes to sect. iv, § 72, and sect. vi, 35, of Dattaca Mimansa.

Dubois, on Customs of People of India, ch. XXVII, XXVIII, and Asiatic Res., vol. vii, p. 263.

give a title to the succession, but that the successor, being the nearest of kin, the most competent, is bound to their due performance for the deceased, to whose property he has succeeded.⁽¹⁾

The Hindu (as will be seen)⁽²⁾ has incoherent, and operative rights in the property of his father; to which correspondent ones may be traced in the ancient law of England. The question in the Hindu books is, as to their extent; upon which different schools differ; inheritance, according to the Bengal school, being defeasible in the lifetime of the father, by gift, or other alienation, including (according to what has been established in the Bengal Courts) *will*, to take effect after his death; whereas, as he cannot by the Hindu law, administered upon Hindu principles, intercept the inheritance by *will*, so, by that law, according to the doctrine of the Benares school, followed as it is to the southward, is his power of alienation in general comparatively limited and restricted, as it was formerly with us, till enlarged by successive statutes.⁽³⁾ Universally, it may be anticipated by *partition*,—voluntary on the part of the father, or without his consent, if warranted by law; and it may be bound by adverse possession in a stranger for twenty years.⁽⁴⁾ Civilly, or naturally, the ancestor must be dead, before

(1) Dutnaram Sing v. Buckshee Sing; Beng. Rep., ante, 1805, p. 22.

Post, Append. to ch. VI, pp. 236, 241.—C.

(2) Post, ch. IX, p. 166.

(3) Ante, p. 5 to 9.

(4) Yajnyawalkya, 1, Dig., 165.—Vyasa and Vrihaspati, 3, Id., 443. Id., 442, and see p. 446.—Ante, p. 32; and Post, Append. to ch. I, p. 26.

the inheritance (in the proper sense of the term) can vest,⁽¹⁾ the same distinction of heir apparent, and heir presumptive, obtaining in both codes, English and Hindu. Thus the heritable pretension of the son of a Hindu being immediate, is (*apratibandha*)—"a heritage not liable to obstruction;" answering with us to the heir apparent, whose right, if he outlive his ancestor, is indefeasible; while that of remoter heirs, as of brothers, uncles, and others, is distinguished, as being *liable to obstruction*, (*sapratibandha*), by the intervening birth of near ones, so that their title is not apparent, but presumptive only.⁽²⁾ What constitutes a civil death will appear in a subsequent chapter.⁽³⁾ And as to a natural one, known or presumed, it is observable here, that there are parts of India, where, if a man leave his native country, to reside in another, his lands devolve upon the village in which they are situated, unless he return within a given number of years;⁽⁴⁾ and the practice being common of going to Benares to die, and being never more heard of, and long absence being considered by sages as equivalent to death,⁽⁵⁾ the law has assigned various periods of absence, inferring the conclusion, according to the age of the person in question at the time of his departure,⁽⁶⁾ the lowest being twelve years;⁽⁶⁾ at the expiration of which, without intelligence of him having been received, the heir is en-

(1) Nareda, 3, Dig., 474.—1, Id., 276.

(2) Mit. on Inh., ch. I, sect. i, § 3.

(3) Post, ch. IX, p. 175.

(4) Append. to Report on the Territories conquered from the Peishwa, by the Hon. Mountstuart Elphinstone, p. 18.

(5) 2, Dig., 472.

(6) 1, Dig., 266, 278.

[(a) Ante. n. 91 & note (a).]

titled to assume the succession ; keeping certain fasts, then burning an image of his ancestor made of *Cusa*, and finally performing for him, in the prescribed form, his funeral rites.⁽¹⁾ To this place may be referred the enlargement of the rule, restricting the inheritance to the fourth in descent from the deceased ; which must be construed as relating to residence in the same province: for, where the heirs have been residing in a distant country, the right continues to the seventh.⁽²⁾

Illegitimate children are a charge upon the inheritance,^(a) but do not inherit by the Hindu, any more than by the English law, excepting in the *Sudra* class.⁽³⁾ Under the old law, indeed, there were instances where, in the higher classes, such issue were eventually inheritable ; as in that of the son of concealed birth, (*Gudhaja*, and in one description of the *Paumer-bhava*, or son of a twice married woman. But these are now generally obsolete;⁽⁴⁾ the latter only occurring still in some instances in the fourth order;⁽⁵⁾ in which illegitimate continue to participate with legitimate sons, if there be any ; and, if there be none, nor daughters, nor daughter's sons, they are then not distinguishable in point of inheritance from legitimate ones ;⁽⁶⁾

(1) Jim. Val., ch. VIII.—1, Dig., 227, 228.—3, Id., 450.

Amal. Res., vol. vii, p. 243.—Post, Append. to ch. VI, p. 237.

(2) Vrihaspati, 3, Dig., 441, 449.—Ante, p. 113.

(3) Menu, IX, 178, 179.—3, Dig., 143, 283, and ante, p. 67.

(4) Post, Append. to ch. IV, p. 205 and 208.

(5) Mohun Sing v. Chumun Rai ; Beng. Rep., ante, 1805, p. 30.

(6) Mit. on Inh., ch. I, sect. xii.—3, Dig., 143.

Datt. Mim., sect. ii, 26.—Datt. Chandr., v, 29, et seq.
ch. III, p. 56.

the case of bastards, whose illegitimate sons inherit their fathers' *rabhan* v. *Chengooram* and another.—Dec. S. U., 1849, p. 50.]

—so regardless has the law been of the manners and habits of this numerous, however inferior class.

If the heir be a minor, a guardian should be appointed for him, to whom the care of his property should be committed, till he is of age to take possession of it himself. This, in the case of the Brahmin, may be upon his ending his studentship, and returning from the house of his preceptor.⁽¹⁾ But, in general, minority continues till the completion of the sixteenth year.⁽²⁾

Such being the right of the son, the Hindu law of inheritance corresponds so far with our own, that property under it lineally descends, and that the male issue take before the female; with this difference, that, among the Hindus, the males in general take altogether; as do with us the females,—the claim of primogeniture, with them, having been at no time more than partially allowed, and now no longer existing;⁽³⁾ and with this peculiarity also, in which it differs from all other codes, that, in default of male issue, the *widow* succeeds,⁽⁴⁾ her place being assigned her, in every enumeration of heirs, next after sons, and before daughters;⁽⁴⁾ in consideration (as is said) of the assistance rendered by her

(1) Menu, ch. VIII, 27.

The Retnacara, 3, Dig., 543.

1, Id., 293, and ante, ch. III, p. 61.

(2) Ante, p. 61, [and note.]

(3) Post, p. 183.

(4) Yajnyawalkya, 3, Dig., 457.—Devala, Id., 474, explained, p. 482. Vishnu, Id., 489.—Mitra, Id., 535.

Jagannatha, Id., 481.—Jim. Vah., ch. XI, sect. i.

Mit. on Inh., ch. II, sect. i, 39.—Menu, ch. IX, 185.

Beng. Rep., ante, 1805, p. 64.

[(a) But, except under exceptional circumstances, she is little more than tenant for life, and trustee for the ulterior heirs.—*Peroomayee v. Ramachendun and another*.—Dec. Mad. S. U., 1857, p. 1.]

to her husband, in the performance of his religious duties.⁽¹⁾

The *Widow*.—Whatever may have been said as to the depressed state of the sex in the East, and upon its general incompetence to inherit⁽²⁾ it must be admitted that a “faithful wife,” whether during the life of her husband, or on his decease, is, by the Hindu law, an undoubted object of its care, if not of its unqualified liberality. In what degree she is so, has already in part appeared in the chapter on *Marriage*,⁽³⁾ and will be farther considered under *Charges on the Inheritance*,⁽⁴⁾ and in treating upon *Widowhood*.⁽⁵⁾ She is conspicuously so in her right to inherit; a right vested in her by marriage, to be perfected on the death of her husband, dying without leaving male issue.⁽⁶⁾ This obtains universally, the deceased, at his death, having been separated from co-heirs.⁽⁶⁾ But, if he die a member of an undivided family, the consequence, with respect to the widow, varies, according as the doctrine of the Bengal or Benares school prevails, as has been already stated.^{(7)(b)}

Her right, however, in any case, to take at all, as heir, has been contested, upon passages and texts—

(1) 3, Dig., 458.

(2) Jim. Vah., ch. XI, sect. vi, 8, 11, and notes.
3, Dig., Text cccxiii.—Id., pp. 528, 529.

(3) Anto, ch. II, p. 23.

(4) Post, ch. VIII, p. 156.

(5) Post, ch. X, p. 227.

(6) Jim. Vah., ch. XI, sect. i, 2, 6.—Mit. on Inh., ch. II, sect. i, 39.
Vrihaspati, 3, Dig., 458.—Vriiddha Menū, 3, Dig., 478, 483.

(7) Ante, p. 110.

And Post, Append. to ch. VI, pp. 232, 233, 250.

[(A) But on her re-marriage she forfeits such right, and the whole of her deceased husband's property lapses to his next heir.—Act XV of 1856, sec. ii.]

[(b) In regard to the law as applicable to Southern India.—Vide Post, ADDENDUM, tit. *Inheritance*.]

understood, and upon arguments, carrying with them almost their own refutation.⁽¹⁾ Among other objections to it, her dependant state has not been overlooked ;⁽²⁾ and her incompetency has been insisted upon, as an inference from the religious use to which wealth is destined ;⁽³⁾ as if this were its only use ;⁽⁴⁾ not to mention the direct answer this argument receives, from the wife's performance of religious ceremonies, in conjunction with her husband in his lifetime ; whence her appellation of *patni*,⁽⁵⁾ as well as her celebration of acts after his death, spiritually beneficial to him, only in a degree less than those performed by a son.⁽⁶⁾ Passages postponing, if they do not omit her altogether in the order of heirs, must be construed as applying to the case, where the deceased was an unseparated brother, whose estate, failing male issue, vests in the surviving parceners ;—a point, upon which, as already intimated, the schools differ.⁽⁷⁾ It has been moreover contended, that, at all events, her succession must depend upon amount ; so that, if the property be but small, it may be allowed ; but, if considerable, she is to be satisfied with maintenance ;⁽⁸⁾—a criterion, obviously of too arbitrary and uncertain a nature, to have

(1) Jim. Vah., ch. XI, sect. i, § 1.

(2) Mit. on Inh., ch. II, sect. i, § 25.

(3) Mit. on Inh., ch. II, sect. i, § 14.

Text ccccxiii, 3, Dig., 484, 317.

Jim. Vah., ch. XI, sect. vi, § 13.

(4) Mit. on Inh., ch. II, sect. i, § 22.

(5) Note to Jim. Vah., ch. XI, sect. i, § 47.

Note to Mit. on Inh., ch. II, sect. i, § 5, 29.

(6) Menu, IX, 28.—Jim. Vah., ch. XI, sect. i, § 43.

(7) Ante, p. 110.

(8) Mit. on Inh., ch. II, sect. i, § 31, 33, 35.

the effect of regulating a right. But, among all these spurious and repudiated doctrines, none has been more insisted upon, than that her right to inherit is inseparably connected with her appointment, by means of another, to raise up issue to her husband ;⁽¹⁾ in which case the son so produced, and not the widow, would be heir; a practice also which, while it prevailed, was reprobated ; and which, for a time that may be said to be beyond memory, has been no longer in use.

Setting aside the above objections, as not entitled to regard, the right of the widow, to succeed as heir to her husband, in default of male issue, is subject to the single condition, of her having been faithful to him during coverture. An unchaste wife is excluded from the inheritance. But, nothing short of actual infidelity in this respect disqualifies ;—nor, the inheritance once vested in her, is it liable to be divested, unless for loss of caste,⁽²⁾ unexpiated by penance, and unredeemed by atonement.⁽³⁾ Prior to the (*Calì*) present age, while the practice prevailed, of contracting marriages in various tribes, rank and privilege among wives was regulated by class, she, among them, who was of the same class with her husband, having precedence, without regard to any other consideration.⁽³⁾ But, such license not now obtaining, where a man has left more widows than one, and no son by any, she

(1) Mit. on Inh., ch. II, sect. i, § 8, 10, 11, 15, 18.

Post, Append. to ch. VI, p. 239.—S.

(2) Mit. on Inh., ch. II, sect. i, 30, 37.—3, Dig., 479.

Post, Append. to ch. VII, pp. 270, 272.—C.

(3) Jim. Vah., ch. XI, sect. i, 47.—3, Dig., 484.

[(a) This disqualification is removed by Act XXI of 1850; but should the widow re-marry, the inheritance passes at once to the next heir to her deceased husband.—Act XV of 1856, sect. ii.]

who was first married, being the one who is considered to have been married from a sense of duty, succeeds, in the first instance;⁽¹⁾ the others inheriting in their turn, as they survive,⁽²⁾ entitled, in the meantime, to be maintained by the first; it being a principle, that whosoever takes the estate of the deceased, must maintain those whom he was bound to support.^{(3)(a)} It may be here noticed, that the widow has not the same dominion over property inherited by her from her husband, that she has over her *Stridhana*, emphatically called “woman’s property;” as has already been seen in a former chapter;⁽⁴⁾ as also, that the descent of the one and of the other, is different; as will appear in the chapter treating upon *widowhood*,⁽⁵⁾ not to interrupt the series of heirs, and course of inheritance, forming the proper subject of the present. To proceed, therefore, on the supposition of the deceased having left neither issue male, nor widow, but daughters.

Daughters.—The right of *daughters* to succeed, in default of sons and widow, is not to be confounded with that of the *appointed* daughter, under the old law. That appointment was one of the many substitutions for a son; and, by a fiction no longer subsisting, regarded as one. The daughter under consideration takes as a principal in her own right, in default of the widow, who has precedence. The appointed daughter derived her title from the will and act of the father.

(1) 3, Dig., 461, 489.—Ante, ch. II, p. 44.

(2) 3, Dig., 486.

(3) 1, Dig., 321.

(4) Ante, ch. I, p. 13.

(5) Post, ch. X, p. 238.—*Daya Crama Sangraha*, ch. I, sect. ii, 4.

[(a) The text is supported by cases cited in the APPENDIX, tit. *Inheritance*. But Mr. T. L. Strange states, quoting Mit. on Inh., II, 1, that this is not the law in Southern India, where the wives are on an equality, and inherit jointly.—Man. of Hd. law, para. 326.]

The daughter not appointed, but succeeding, derives hers from the law, having regard to the general principle of conferring, at his obsequies, benefits on the deceased.⁽¹⁾

Daughters, like sons, conferring proportionate benefits on the deceased, take in common; but with this difference, that they succeed, not indiscriminately, but in order, as they are single, married, or widows; the single, though there should be but one of that description, taking the whole of the inheritance first, to the exclusion of the rest of her sisters during her life. The single having enjoyed it, it vests next in the married ones, and finally in such as are widows; with a proviso, in the instance of the married, that they be mothers of sons, or likely to become so.^{(2)(a)} on the ground that daughters inherit, in right of the funeral relation to be presented by their sons; while the son succeeds in his turn, as being the person to offer it.⁽³⁾ This is analogous to the law, as applicable to the appointed daughter, before that substitution, with others of a more questionable kind, became obsolete;⁽⁴⁾ and it has the effect of excluding childless widows. It is observable, however, that the Mitacshara, so far from sanctioning any such proviso, has, in express terms, controverted the notion, that

(1) Menu, ch. IX, 130.—Jim. Vah., ch. XI, sect. ii, I.

3, Dig., 592—597.—Mit. on Inh., ch. II, sect. ii.

Vrihaspati, 3, Dig., 186.—Yajnyawalkya, 457.

Vishnu, 469.—Nareda, 491.

(2) Jim. Vah., ch. XI, sect. ii, § 1, 4, 12, 25, Note.—Mit. on Inh., ch. II, 2, 3. Gudhadur Sermav. Ajodhearam Chowdry, Beng. Rep., ante, 1805, p. 6. 3, Dig., 491.—Post, Append. to ch. VI, p. 239.—S.

(3) Jim. Vah., ch. XI, sect. xi, § 2, 17.

3, Dig., 498, et seq.—Id., 481.

(4) Menu, ch. IX, 132, 133.

[(a) The barren married and sonless widowed daughters taking last.—Str. Man. of Hd. law, para. 329.]

women inherit only through male issue.⁽¹⁾ Moreover, it is said that, in Southern India, widows, if unendowed, inherit before married daughters endowed, and that the Smṛiti Chandrica, commenting on the term, unendowed, specifically enumerates widows. According to one opinion, not only the sons of daughters, but the daughters of daughters also inherit, in default of sons;⁽²⁾ but this does not appear to have been sustained: on the other hand, where there are sons, their right of succession is postponed to that of other daughters of the deceased;⁽³⁾ and, where such sons are numerous, when they do take, they take *per stirpes*, and not *per capita*.⁽⁴⁾ Authorities, postponing still farther their right, have been denied;⁽⁵⁾ but the succession in the descending line from the daughter proceeds no farther, the funeral cake stopping with the son;⁽⁶⁾ which is an answer to the claim of the son's son, grounded on the property having belonged to his father.⁽⁷⁾ Neither, according to Jimutavahana, on failure of issue, does the inheritance, so descending on the daughter, go, like her *Stridhana*, to her husband surviving her, but it goes to those who would have succeeded, had it never vested in such daughter:⁽⁸⁾ but

(1) Mit. on Inh., ch. II, sect. ii, § 3.—3, Dig., 493, 501.
Post, Append. to ch. VI, p. 239.—S.

(2) Balambhatta, note to Mit. on Inh., ch. II, sect. ii, § 6.

(3) Jim. Vah., ch. XI, sect. ii, § 23—25.
Daya Crama Sangraha, ch. I, sect. iv.

(4) 3, Dig., 501.

(5) Baloca, Jim. Vah., ch. XI, sect. ii, § 27.—Misra, 3, Dig., 535.

(6) Jim. Vah., ch. XI, sect. ii, § 2.

(7) Compare 3, Dig., 502, with the Comment on Nareda, Id., 491.

(8) Jim. Vah., ch. XI, sect. ii, § 30.—3, Dig., 494, 497.
Daya Crama Sangraha, ch. I, sect. iii.

according to the Southern authorities, it classes as *Stridhana*, and descends accordingly. And, upon the same principle, the husband is precluded during her life from appropriating it, unless for the performance of some indispensable duty, or under circumstances of extreme distress.⁽¹⁾ Whereas, the daughter's own power over it is greater than that of the widow of the deceased, whose condition is essentially one of considerable restraint.⁽²⁾ In default, therefore, of issue, quitting the descending line, the *melancholy succession*, as it has been called, takes place; and the inheritance *ascends*.

Parents.—The feudal abhorrence of succession from sons to parents, (*hereditas nunquam ascendit*.)⁽³⁾ upon whatsoever reason founded, revolts common minds, particularly as it excludes the father, to whom by nature we are so bound; for whose services and bounties the offspring is in general so indebted. Peculiar, in its full extent, to our own laws, with such as have been deduced from the same original, it may be remarked that, with regard to the mother, it existed in the Codes of Jerusalem, of Athens, and of early Rome, the sex having been everywhere, and at all times, comparatively restricted in the amount and enjoyment of property; but where, in England, feudal subtlety has not been allowed to prevail, namely, in the distribution on the death of the owner of *personal* effects, the claims in question have had a considerate attention paid

(1) Mit. on Inh., ch. II, sect. xi, § 31, et seq.—Ante, p. 15.

(2) Post, ch. X, pp. 234, 241.—3, Dig., 465, et. seq.

(3) Blacket. Comm., vol. ii, p. 211.—Chitty's Ed., 1826.

to them; and justice and nature, in this part of our juridical arrangements, have been vindicated. In one particular, the Hindu law, according to the sentiments of some, by whom it has been handed down, is at variance with that of every other people, to whom we are accustomed to look, as to a standard for legislative wisdom; in that, failing wife and issue, they represent the mother as succeeding first, and the father not till after her;⁽¹⁾ her prior title resting with some,⁽²⁾ on the pains and merit of child-bearing; with others,⁽³⁾ on the fanciful notion of her comparative propinquity to her issue, so as best to satisfy the rule of Menu, that “to the nearest *Sapinda*, “the inheritance belongs;”⁽⁴⁾ though, upon another principle, equally familiar among Hindu jurists, namely that “the seed is preferable to the soil,”⁽⁵⁾ the right, in this respect, would be rather with the father.⁽⁶⁾ Accordingly, respecting the pretensions of the mother, much difference of opinion prevails, as appears from a learned note by the translator of the *Mitacshara*;⁽⁷⁾ assigning, in conformity with some authorities, priority to the father; with others, joint, co-ordinate participation; and, alleging with a third set, the vague criterion, already alluded to,⁽⁸⁾ of relative respectability, in point of personal qualifications, the one to the other.⁽⁹⁾ Another

(1) Mit. on Inh., ch. II, sect. iii, 2.

(2) 3, Dig., 504, 505.

(3) Mit. on Inh., ch. II, sect. iii, 3.

(4) Note to Mit. on Inh., ch. II, sect. iii, 3.

(5) Menu, ch. IX, 35.—3, Dig., 215, et seq.

(6) Jim. Vah., ch. XI, sect. iii.—3, Id., sect. iv, 3.

(7) Note to Mit. on Inh., ch. II, sect. iii, 5.

(8) Ante, p. 88.—Post, 183.

[9] The Sudder Pundits affirm that in the ascending line the mother takes before the father.—Str. Man. of Hd. law, para. 336.7

idea has been that, on failure of the mother, not the father, but the paternal grandmother succeeds, excluding the father altogether, as the surer means of preserving the property in the same tribe; upon the ground that, the father succeeding, the estate becomes a paternal one, and, as such, may devolve as well on sons belonging to a mixed class, as on issue by a wife of his own:—whereas, if taken by the grandmother, it descends, as a maternal one, to persons of the same class only,—namely, to her daughters and their representatives.⁽¹⁾ Of this solicitude to preserve the inheritance in the tribe to which it had belonged, an early instance is exhibited, in the decree made in the case of the daughters of *Zelophehad*, of the tribe of *Manasseh*; upon whose death, without sons, it was settled, that they should succeed to their father's land; but, for the reason given, that they, and others on whom the inheritance should devolve under the like circumstances, should marry in their own tribe.⁽²⁾ And the English lawyer may be reminded by it of the pains taken, so far as regards real property, to justify, upon feudal principles, a similar exclusion of the father from inheriting to his son, under our own Code.⁽³⁾ But, whatever may have been formerly the force of this argument, as it respects Hindu fathers, there must have been an end of it, from the time that marriages among them, with women of inferior classes, ceased to be legal.⁽⁴⁾ Although, between the different opinions, Jagannatha, commenting on the sub-

(1) Mit. on Inh., ch. II, sect. iv, 2, and note to Id., sect. iii, 3.

(2) Numbers, XVII, 1, XXXVI, 6.

(3) 2, Blackst. Comm., p. 210.

(4) Ante, ch. I, p. 28, and 3, Dig., 485.

ject, professes neutrality, declaring that there is no certainty on the point,⁽¹⁾ it is evident that the inclination of his judgment was in favor of the father, upon the ground that influences throughout the Hindu law of inheritance, namely, his comparative efficacy in performing obsequies to the deceased; upon which ground, the son of the daughter is preferred in succession, as well to both parents, as to the brother.⁽²⁾ Of a son dying childless, and leaving no widow, Menu, according to the gloss of Culluca Bhatta, says, "the father and mother shall take the estate."⁽³⁾ This, according to Hindu reasoning, establishes in the father the right of prior enjoyment; other versions of the same text, omitting the father, have been construed to suppose the father dead;⁽⁴⁾ and, if the opposite views that have been taken of the question are resolvable into nothing more than different readings of the text of Vishnu, each resting upon respected authority, reason ought to decide between them with Jagannatha, in favor of the father; upon the principle, that, "if two texts differ, reason, or that which it best supports, must in practice prevail, when the reason of the law can be shown."⁽⁵⁾ That the father takes first, is the doctrine of the Bengal school; resting the subsequent

(1) 3, Dig., 503.

(2) Jim. Vah., ch. XI, sect. iii, § 3.

(3) Menu, ch. IX, 2f7.

(4) Mit. on Inh., ch. II, sect. iii, § 2.

Jim. Vah., ch. XI, sect. iii, § 2.

3, Dig., 503.—See also Menu, ch. IX, 185.

(5) 3, Dig., 489.—Jim. Vah., ch. XI, sect. i, § 5, and note.

Id., ch. XI, sect. iii, § 1.—3, Dig., 527, et seq.

Yajnyawalkya, 3, Dig., 505.

title of the mother on her claims as having borne the deceased, and nursed him in his infancy. Step-mothers, where they exist, are excluded;⁽¹⁾ and, in whatever order the natural mother inherits, she is, like the widow, taking as such,⁽²⁾ restricted from aliening the estate, unless for her necessary subsistence, or for pious purposes beneficial to the deceased; and her power over it, even for these, is allowed but to a moderate extent.⁽³⁾

Brothers.—Had the property been the mother's, in the Hindu sense of "woman's property," it would descend on her death to her daughters; but, having been inherited by her from her son, it passes, according to the law as practised in Bengal, not to her heirs, but to his;⁽⁴⁾ which, on failure of issue male of the proprietor, of widow, issue female, and parents, are his *brother* or *brothers*; those of the whole being preferred to those of the half blood; those of the half succeeding only on failure, or in default of those of the whole.⁽⁵⁾ With regard to the brother in general, his title rests on the benefits he confers, by the offer of oblations, in which the deceased owner of the property participates, and in presenting

(1) Menu, ch. IX, 185.—Jim. Vah., ch. XI, sect. vi, 3, 4.

Mit. on Inh., ch. II, sect. iii, 3, 5.

Bishenpirca M. v. R. Soogunda; Beng. Rep., ante, 1805, p. 40.

Barainee Dibah v. Harkishor Rai; Id., p. 42.

Rychundoo Narain Chowdry v. Goculchund, G.; Beng. Rep., 1805, p. 46.

Daya Crama Sangraha, ch. vi, 23, vii, 3.

(2) Post, p. 237.

(3) Mt. Bijya Dibeh v. Mt. Unpoorna D.; Beng. Rep., 1806, p. 84.

(4) Note to Jim. Vah., ch. XI, sect. iv, 7.

(5) Jim. Vah., ch. XI, sect. v, § 1, 8, 9, 11.

Mit. on Inh., ch. II, sect. iv.—3, Dig., 506.

Gudhadur Serma and another v. Ajodhoaram Chowdry; Beng. Rep., ante, 1805, p. 6.—Daya Crama Sangraha, ch. I, sect. vii.

others which the deceased was bound to offer; and in this respect, occupying his place.⁽¹⁾ And as, between the whole and the half brother, the former takes first, as presenting oblations to six ancestors, which the deceased was bound to offer, and three oblations, in which he participates: while the latter presents none to ancestors; but presenting three in which the deceased participates, he is superior to the nephew; who, accordingly, though son of a brother of the whole blood, is postponed in succession to his uncle of the half,⁽²⁾—a preference nevertheless that has been censured.⁽³⁾ A distinction is glanced at, as varying the succession, according as the property in question happens to have been inherited, or acquired by the deceased, but it does not appear to be established.⁽⁴⁾

Nephews.—The line of brothers being exhausted, their sons (or the nephews of the deceased, as already intimated) succeed, the whole being still preferred to the half-blood,^{(5)(a)}—a son of an uterine brother conferring benefits on the mother of the deceased proprietor.⁽⁶⁾ To which is to be added, that, unlike sons of daughters, they take *per capita*, not claiming *jure representationis*, as if their fathers had had a vested interest in their brother's property, before their decease; whereas the right only vested in them by the demise of the owner, their fathers being at the time

(1) Jim. Vah., ch. XI, sect. v, § 3.—
Mit. on Inh., ch. I, sect. iv.

(2) Jim. Vah., ch. XI, sect. v, § 12.

(3) Note to Mit. on Inh., ch. II, sect.
iv, 6.

(4) 3, Dig., 506.

(5) Jim. Vah., ch. XI, sect. vi, § 1, 2,
Mit. on Inh., ch. II, sect. iv, § 7.

8.—3, Dig., 518, 527.

Daya Crama Sangraha, ch. I, sect. 8.
(6) 3, Dig., 519, 524.—Daya Crama
Sangraha, ch. I, sect. 8, 1.

[^(a) And the undivided to the divided.—Str. Man. of Hd. law, p. 242.]

dead.⁽¹⁾ The sons of nephews, or grand-nephews, next take; but here the succession in the male line from the father direct stops, the great-grandson being too distant in degree to present oblations;⁽²⁾ and, failing heirs of the father down to the great-grandson, the inheritance devolves on his daughter's son, in preference to the uncle of the deceased; as, failing male issue of the latter, it descends to *his* daughter's son, in preference to his brother.⁽³⁾ But the *sister*, being, on account of her sex, no giver of oblations at periodical obsequies, is excluded; as would be the case with the daughter, but that her right of succession, like the wife's, is provided for by an express text;⁽⁴⁾—the general principle being, that the sex is incompetent to inherit.⁽⁵⁾ Such appears to be the law of the Bengal Provinces; but it is not to be taken as universal, opinions existing, that the term “brethren,” in the enumeration of heirs, in the *Mitacshara*, includes *sisters*; as “parents,” have been seen to do *father and mother*; but they stand controverted.⁽⁶⁾ Jagannatha also observing that “it is nowhere seen, that sisters “inherit the property of their brothers;”⁽⁷⁾ and, referring to a text that gives colour to their pretensions, he adds, that it is sufficiently explained, “as relating to

(1) Balambhatta, note to *Mit. on Inh.*, ch. II, sect. iv, 7.

(2) *Jim. Vah.*, ch. XI, sect. vi, § 7.—*Menu*, ch. IX, 186.
3, Dig. 526, 527.

(3) *Jim. Vah.*, ch. XI, sect. vi, § 8.—3, Dig., 527.

(4) Note to *Jim. Vah.*, ch. XI, sect. vi, 8.

(5) *Anto*, p. 123.

Post. Append. to ch. VI, p. 239.

(6) Note to *Mit. on Inh.*, ch. II, sect. iv, § 1.

(7) *Post. Append.* to ch. VI, pp. 243, 245.—C. and S.

“the allotment of an adequate sum to defray their nuptials.”⁽¹⁾ The same observation applies to the claim of *nieces*.⁽²⁾ A sister’s son inherits in Bengal; but not in the provinces that follow the Mitacshara.^{(3)(a)}

To this extent the law of inheritance is established with little variation, comprehending, as has been seen, the deceased’s family, and near relations, viz., his issue male and female; his wife, who takes immediately in default of sons; his parents, brothers, nephews, and grand-nephews; the *competency* to benefit him, in the solemnization of obsequies, at once forming the consideration for, and the *degree* of it determining the order of succession;⁽⁴⁾—benefits conferred by the nearest of kin being regarded of more importance than those offered by one more distantly allied:⁽⁵⁾—just as ability for personal service constituted the claim of heirship, among the feudal nations, including our own. And as, among them, together with the nations of antiquity, the *agnatic* succession was in general preferred, so is it among the Hindus; the instances, in which females are allowed to inherit, being deemed exceptions.⁽⁶⁾

Failing issue of the father, inheritance continues to ascend upwards to the grandfather, and great-grandfather, the grandmother and great-grandmother, the

(1) 3, Dig. 517, 27, Manu, ch. 115, 212.

Mt Runnoo v. Joo Runnoo, Beng. Rep., p. 8.

(2) Append. to ch. VI, p. 240.

(3) Rajchunder, N. C. v. Ghendehand; Beng. Rep., ante, 1805, p. 46.

(4) Jm. Vah., ch. XI, sect. vi, § 20, 31.

(5) 3, Dig. 526, 455.

(6) Note to Jm. Vah. ch. XI, sect. vi, §

Gungadutt Jha v. Sree Narain Rai, Beng. Rep., 1812, p. 325.

[(a) The text as affirmed by decisions of the late Sudder Udaish and High Court (vide ADDENDUM, tit. *Inheritance*), but the Pundits of the Court declared that sister’s sons are in the line of heirs, quoting in support passages from the Mitacshara, Smriti Chandrica, and Saraswati Vilasa; of which, however, the Court placed no reliance.—Vide Dec. Mad. S. U., 1853, p. 211, 1854, p. 185.]

latter being preferred in time, by those who contend for the precedence, in succession of the mother before the father; descending also downwards to their respective issue, including daughters' sons, but not daughters; and with the same distinction that has been already noticed, as between the whole and the half blood. But, in proportion as the claim becomes remote, it varies in particulars with different schools, and authors; for the details of which, being beyond the scope of a work so general as the present, recourse must be had to the summary of *Sriçrishna Tercalan-cara*,⁽¹⁾ and especially to the two translated treatises on the subject, with the notes and remarks of their learned translator; as well as to the "Digest," expressly on the law of "Successions."⁽²⁾

In default of natural kin, the series of heirs, in all the classes, that of the *Brahmin* excepted, terminates with the preceptor of the deceased, his pupil, his priest hired to perform sacrifices, or his fellow-student, each in his order; ⁽³⁾—and, finally, failing all these, the lawful heirs of the *Cshatrya*, *Vajsyā*, and *Sudra*, are learned and virtuous Brahmins;⁽⁴⁾⁽⁵⁾—a description, however special,

(1) Post, p. 241. — For a character of this author, see Pref. to Treatises on Inheritance, translated by Mr. Colebrooke, p. vi. Post, Append. to ch. VI, p. 246.

(2) Jim. Vah., ch. XI, sect. vi, to the end. — Recapitulation by Sriçrishna Tercalan-cara. — Id., p. 221, Append. to ch. VI, p. 253.

Mit. on Inh., ch. II, sect. v, and v
3, Dig., 525, 532. — Menu, ch. IX, 187.

(3) Jim. Vah., ch. XI, sect. vi, 24.

Mit. on Inh., ch. II, sect. vii. — 3, Dig., 523, 544, 544.

(4) Jim. Vah., ch. XI, sect. vi, § 27. — Mit. on Inh., ch. II, s.
3, Dig., 537. — Post, p. 302.

Daya Crama Sangraha, ch. I, s. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

(5) The Privy Council have, however, declared that the property escheats to the Crown as any other property on the principle of general law, that what becomes without an owner falls to the Crown, and that the matter is not governed by the Hindu law. — Str. Man. of Ind. Law, para. 359.]

yet too comprehensive to be consistent with the right of escheat, for want of heirs, in the king; and, therefore, it has been narrowed, in construction, to such as reside in the same town or village.⁽¹⁾ In the event of the estate of any of these vesting by inheritance in a Brahmin, as he, being such, cannot perform obsequies for one of an inferior tribe, the duty may be discharged by the substitution of any qualified person, equal in class with the deceased: and, in all cases, where the heir is under a disability, he must take the same course, paying the person employed for his service.⁽²⁾

Failing all preceding claimants, the property of any of the inferior classes vests, by escheat, in the king: who, as with us, may be said to be, in this respect, *ultimus hæres*;⁽³⁾ and, as an incident, he is to cause obsequies to be performed for the deceased.⁽⁴⁾ But the estate of a Brahmin descends eventually, and ultimately, to Brahmins, or learned priests.⁽⁵⁾ That it cannot be taken as an escheat by the king,^(a) "This (says Menu) is a fixed law."⁽⁶⁾ For the king to take it under any circumstances, or for any purpose, other than that of protection, and preservation for the rightful owner, would be sacrilege, equivalent to that of appro-

(1) Jim. Vah., ch. XI, sect. vi, § 27.—3, Dig., 537.

(2) 3, Dig., 545, 546.

(3) Jim. Vah., ch. XI, sect. vi, § 34.
Mit. on Inh., ch. II, sect. vii, § 6.
Vrihaspati, 3, Dig., 538.

(4) The Vishnu Purana, 4.4.3, Dig., 623.

(5) Sancha and Lichita, 3, Dig., 539.—1, Id., 469.
Mit. on Inh., ch. II, sect. vii, § 7.

Post, Append. to ch. VI, p. 247.—E. and vide Post, 302.

(6) Menu, ch. IX, 189.

[(a) Ante, p. 137 note, (a.)]

priating what has been consecrated to the gods.⁽¹⁾ Rather than it should so escheat, should there be none of the same class competent to take it, (meaning probably, as before, in the same town,) it is “to be cast into the waters;”⁽²⁾—a figurative declaration, doubtless, never intended to be literally and universally enforced.

As holy mendicants, and avowed devotees, such as hermits,⁽³⁾ ascetics,⁽⁴⁾ and professed students of theology,⁽⁵⁾ in abdicating all worldly ties, lose their title, as heirs to those, to whom they are by nature related,⁽⁶⁾ so is any property that they have, such as the hoard of wild rice belonging to a hermit, the gourd, clout, and other similar effects of an ascetic, and the books, clothes, and the like, of a student,⁽⁷⁾ transmissible, not according to the general law of inheritance, but among themselves, as with us in the case of corporations.⁽⁸⁾ Of such successions an instance will be found in the Appendix,⁽⁹⁾ and several in the Bengal Reports, referable to the religious order of *Sanyasis* or *Gosains*; who, being restricted from marrying, and consequently precluded from leaving legitimate issue, are, on their death, succeeded in their rights and possessions by their *Chelas*,

(1) 3, Dig., 587.

(2) Nareda, 1 Dig., 335, 336.—3, Id., 541.

(3) Vanaprasta.

(4) Yati, or Sanyasi.

(5) Brahmachari.

(6) Post, p. 154.

(7) Note to Jim. Vah., ch. XI, sect. vi, § 36.

(8) Jim. Vah., ch. XI, sect. vi, 35.—Mit. on Inh., ch. II, sect. viii, 3, Dig., 546.—Daya Crama Sangraha, ch. I, sect. x, 35, et seq.

(9) Post, Append. to ch. VI, p. 248.

or adopted pupils.⁽¹⁾ It may be added here, that lands endowed for religious purposes are not inheritable at all as private property, though the management of them, for their appropriate object, passes by inheritance, subject to usage; as in the case of many of the religious establishments in Bengal, where the superintendence is, by custom, on the death of the incumbent, elective by the neighbouring *mohunts*, or principals of other similar ones.⁽²⁾

Such is, by the Hindu law, the course of inheritance, where it is not obstructed by any cause of exclusion; and subject, in all cases, to particular obligations and charges. These causes and incidents will constitute the subject of the two following chapters.

[NOTE.—In this chapter, the Law of Inheritance is considered in its application to a *divided* family, *i. e.*, to the heirs of a son who had separated from his coparceners and had become the sole owner of what he possessed. No mention is made of the descent of an unmarried woman's property, while that of a widow is treated of in a separate chapter,^(a) and information in regard to succession in an *undivided* family is left to be gathered from the chapter on "Partition."^(b) The disposition of property on partition in a father's lifetime and inheritance upon his death, are in most respects identical, except, with this material difference in regard to self-acquired property, that the father has power, division taking place during his lifetime, to apportion it among his sons at his discretion, while after his death, it classes as ancestral, and is governed by the same rules as such property.^(c) But as succession in an undivided family differs, in certain respects from that which prevails in the case of property held individually, it may not be inappropriate to sum-

(1) Beng. Rep., 1806, pp. 73, 92.—Id., 1807, p. 144.—Id., 1810, p. 246.—Bombay Rep., p. 397.

(2) Elder widow of Rajah Chutter Sein v. younger widow, of ditto; Beng. Rep., 1807, p. 103.

Narrain Das v. Bindhabun Das, Id., 1814, p. 481.

* Post, Append. to ch. VI, p. 250. Sir W. Jones.

Id., to ch. IX, p. 362.

[(a) Post, chap. X, p. 223.] [(b) Post, chap. IX, p. 166.] [(c) Ante, p. 111.]

marize here, for convenience of reference, the line of heirs to an undivided estate. It is as follows:—The estimated share of each brother vests successively in his sons, sons' sons, and sons' grandsons, as in the case of individual property. Failing these, the lapsed share vests equally in the surviving brothers. The great-great-grandson of the demised brother would not take it unless kept opened for him by the survival of his father or grandfather. From the brothers the lapsed share vests in their male issue as far as the great-grandson. After that it passes to the widow of the last survivor of any of these, the widow of those previously demised not participating.^(a) This is because on the death of the brother who first demised, the entire property vests in the surviving brother and so passes on to his widow.^(b) Should she re-marry, her interest in the property will cease and determine as if she were dead, and the next heirs of her deceased husband or other persons entitled to the property on her death succeed to the same.^(c) When there may be male issue of the undivided brothers, the estate passes from one cousin to another to the remotest degree while remaining undivided; and on all these failing, the widow of the last survivor among them. It finally goes to the divided relatives in their order.^(d)

Any property a female, dying unmarried, may possess, goes to her brothers and then to her mother and father. If she have been betrothed, any nuptial presents she may have received from her intended husband, are returnable to him, the charges on both sides being first deducted.^(e) The property of a dancing girl passes to her female issue first and then to her male as in the case of other females, but on failure of issue it goes to the pagoda to which she is attached.^(f) The heirs of a prostitute are her issue after her degradation. None of her relatives who remain undegraded in caste, whether offspring or other, inherit to her.^(g)

In the province of Malabar, the *Maroomakatayam* law prevails generally, according to which the inheritance runs in the female and not in the male line:—thus a man's property descends to his sisters, sisters' sons, sisters' daughters, sisters' daughters' sons and daughters; mother, mother's sisters, their children; and to his maternal grandmother, her sisters and their children. Failing these, it goes to the man's disciple and fellow-student, and then escheats. In Canara, a similar system of inheritance obtains which is termed *Alya Santan*.^(h)

(a) Str. Man. of Hd. law, para. 347.]

(b) II, Colebrooke, pp. 231, 232.]

(c) Act XV of 1856, sect. ii.]

(d) Str. Man. of Hd. law, para. 347.]

[e] Mit. on Inh., ch. II, sect. 21, § 30.]

(f) Str. Man. of Hd. law, paras. 361, 362.]

(g) Proc. of Mad. S. U., 11th Nov. 1844.]

(h) Str. Man. of Hd. law, paras 382, 404.]

CHAPTER VII.

ON DISABILITIES TO INHERIT.

EXCLUSION from inheritance, with the Hindu, rests, in general, upon the same principle with succession to it; *i. e.*, it is connected with the obsequies of the deceased; from their incapacity to perform which, the excluded are incompetent as heirs.⁽¹⁾ The causes of it are sufficiently numerous; defects both of body and mind, together with vice, constructive as well as actual, being attended with this effect; and lastly, devotion to any of the religious orders.

At first sight, it appears harsh to divest of their heritable rights, not only idiots and madmen, but the deaf, the dumb, and the blind, the lame, and the impotent;⁽²⁾ and, certainly, disqualification, in this respect, is extended, by the law in question, beyond what takes place in our own, or other Codes; but when it is considered, how unfitted these in general are for the ordinary intercourse of the world,⁽³⁾ and that they are, by the same law, anxiously secured in a maintenance for life, chargeable upon those who replace them as heirs, the severity of the enactment is not only in some degree abated,

(1) Jim. Vah., ch. XI, sect. vi, 31.

(2) Menu, ch. IX, 201, 202.—Jim. Vah., ch. V, § 7, et seq.

Mit. on Inh., ch. II, sect. x.—Daya Crama Sangraha, ch. II, 1, Bombay Rep., p. 411.

(3) Baudhayana, 3, Dig., 316.—2, Dig., 2.

but it even admits of comparison with our own institutions. The idiot and lunatic are not indeed, with us, disinherited; but in effect, their condition, while their infirmity continues, differs but in name from that of the Hindu, alike destitute of reason. Their property is, by the English law, vested in others, subject to their being maintained out of it; which is precisely the condition of the Hindu, under similar circumstances; with this in his favor, that the obligation of maintenance, on behalf of the excluded in general, is rendered as cogent as possible; any failure in it being not only a cause of disherison in those, by whom it is withheld, but denounced moreover for punishment in another world;⁽¹⁾ thus, in the instance of persons, not only wretched and helpless, but, circumstanced as they are, peculiarly liable to be neglected, establishing it not as a civil merely, but as a solemn right. And it is only where these infirmities are coeval with birth, that the disability attaches: though Jagannatha seems to make the case of the mad man an exception in this particular;⁽²⁾ and, of the impotent (who is also excluded) it is said by a sensible author, to be indifferent, whether he is naturally so, or by castration.⁽³⁾ The idiot is described as one incapable of discriminating right from wrong, and insusceptible of instruction;⁽⁴⁾ and various causes are assigned for that madness which disquali-

(1) Menu, ch. IX, 202.—Mit. on Inh., ch. II, sect. x, § 5.—3, Dig., 320.

(2) 3, Dig., 314.—Vid. tamen, Id., 304.

(3) Balambhatta, note to Mit. on Inh., ch. II, sect. x, § 1. Qu. tam. et Vid., 3, Dig., 320.

(4) Mit. on Inh., ch. II, sect. x, § 2.—Jim. Vah., ch. V. § 9

fies.⁽¹⁾ The deaf, the dumb, and the blind are, with us, severally, as such, no way affected in their rights; but, if a man be born destitute at once of the power of hearing, speaking, and seeing, the avenues of knowledge thus shut up, and the requisites of a social being denied him, he is, by our law, looked upon as an idiot, and liable to be treated accordingly. And, upon the same principle, the ground of their exclusion by the Hindu law is stated by one writer to be their want of initiation and investiture, arising from their unaptness for the requisite studies.⁽²⁾ By this law, privation of any one of these faculties excludes from inheritance, as does lameness; but it must be entire; that is, the individual must be so lame, as not to be able to walk on either foot; and so, as to his hands, he must be deprived of the use of both.⁽³⁾ To induce disinherison with us, from bodily defect, the birth must be a monstrous one; for, however deformed, or deficient, if it have human shape, it may be heir.

But neither are these, by the law under consideration, the only natural visitations productive of this civil disability. Believing, as we do, in the resurrection of the body, we remain ignorant as to the intermediate state of the soul after death, possessing in that particular no distinct revelation. But the Hindu conceives his attainment of supreme bliss, in the reunion of his spirit

(1) Mit. on Inh., ch. II, sect. x, § 2.

(2) Jim. Vah., ch. V, § 18.

(3) 3, Dig., 321, 322, Jim. Vah., ch. V, § 10.

with its author, to be subject to innumerable transmigrations, according to circumstances, and especially according to his conduct in the present life ; ⁽¹⁾—a notion, (however originating) that appears to have been widely adopted in ancient times. ⁽²⁾ Hence his tenderness to sentient beings of every description, and reluctance to the shedding of blood ; with its habit, sanctioned by law, of attributing to delinquency, in a former state of existence, a great proportion of the physical infirmities to which flesh is heir. Universally, the sin of the parent but too often manifests itself in the debility of the offspring ; and the individual, in various ways, feels in his frame the direct fruits of his own vicious indulgence. But, with the timid and superstitious Hindu, overlooking natural causes, maladies, if extreme, are regarded as an expression of the divine displeasure at vice and crime, indulged and perpetrated in a prior form ; which it remains for the actual sufferer to expiate, forfeiting in the meantime his succession. “ Some evil-minded persons, (says Menu,) “ for sins committed in this life, and some for bad actions in a preceding state, suffer a morbid change in “ their bodies.” ⁽³⁾ Reproducible to the extent of seven successive births, ⁽⁴⁾ of these morbid and sinful

(1) Menu, ch. VI, 61.—Id., ch. XII, 16, et. seq.

(2) St. John, ch. IX, ver. 1.

Non intire animas, sed ab aliis, post mortem, transire ad alios.
(Cæsar Comm. lib. vi, 14.) Whence Horace's description, *non paventis funera Gallie*. Upon which the scholiast says, *verè persuasione rursus renascendi mortem non timebant*. And, to the same persuasion may perhaps be referred that passive courage, so characteristic of the Hindus.—See also Ovid's Met., lib. xv, l, 158.

(3) Menu, ch. XI, 48.—Post, Append. to ch. VII, p. 257.

(4) Satatapa, 3, Dig., 313.

marks, presumptive of crime, and obstructive of inheritance, a copious and minute list is added;⁽¹⁾ of which some of the specimens are sufficiently appropriate with reference to the offence they are considered as representing. The disease that disables, (an obstinate or an agonizing one,) must be ascertained to be the sign of an atrocious crime, or it has not the effect of excluding;⁽²⁾ it being, not the disease, but the sin that is the cause of the disability;⁽³⁾ and hence it may be removed by penance,⁽⁴⁾ the impediment continuing to operate, only so long as penance remains unperformed.⁽⁵⁾ Thus restored, inheritability follows; there being said to be no case, in which a man competent to the one, is not qualified for the other.⁽⁶⁾ Of *obstinate* diseases, *marasmus*, or atrophy, is mentioned as an instance; of the *agonizing*, leprosy;^(a) but it must be of the sanious, or ulcerous (the worst) kind;^{(7)(b)} of which a text of the *Bawisha Purana* gives a disgusting description.⁽⁸⁾

If vice, thus imputed by inference, of which the indi

(1) Menu, ch. XI, 49, et seq.

(2) 3, Dig., 314.

(3) 3, Dig., 312.

_____ necesse es

Multa dieu concreta modis inolescere miris ;
Ergo exercentur pœnis ; veterumque malorum
Supplicia expiunt.

Æn. VI, v. 737.

(4) Menu, ch. XI, 209, et seq.

(5) Post, Append. to ch. VII, pp. 261, 268.—E. Id., p. 272.—C.

(6) 3, Dig., 305.

(7) 3, Dig., 303, 309, 311, 312.—Mit. on Inh., ch. II, sect. x.

See case of leprosy, as justifying suicide, with its aiders and abettors ;
Béng. Rep., 1810. pp. 239 and 321

(8) 3, Dig., 309.

[(a). The disqualification descends to heirs, although adopted.—*Sevachet-
umbara Pillay v. Parasucty*.—Dec. of Mad. S. U., 1857, p. 210.]

[(b). *Muttuvelayuda Pillay v. Parasakti*.—Id., 1860, p. 259.]

vidual is unconscious, is to be so punished, and requires to be so expiated, much more than that of which, in his actual person, the guilt of the delinquent is established by confession, or proof. "All those brothers (says "Menu) who are addicted to any vice, lose their title "to the inheritance."^{(1)(a)} And, though free from vice, if, destitute of virtue, a son neglect fulfilling, to the utmost of his power, prescribed duties, he is excluded from participation. Passing by positions so general, and which have not been uniformly expounded, certainty will be best sought in particular instances. By some, vice, excluding from inheritance, is resolved into the unwarrantable pursuit of wealth by robbery, larceny,^(b) crimes against the person, with inferior delinquencies.^(c) Of these, such as amount to felonies, are attended with forfeiture by our own law. Whether this explanation of the term comprehends gaming, must be collected from various authorities,⁽³⁾ compared as to weight and number. The Digest, reviewing different opinions on the point, says, that many authors (among whom is included Culluca Bhatta) acknowledge the exclusion of a man addicted to it, and similar vices;⁽⁴⁾ while others are alluded to, according to whom, the persons in question are not deprived of their shares: but, whether by this, or by whatever other means they

(1) Menu, ch. IX, 214.—Jim. Vah., ch. V, § 13.—3, Dig., 299, 302, et seq. Daya Crama Sangraha, ch. III, 2, et seq.

(2) Jim. Vah., ch. v, 13.—Mit. on Inh., ch. II, sect. x, 3. Vrihaspati, 3, Dig., 230, 301.—Nareda, Id., 303.

(3) Nareda, 3, Dig., 140.—Apastamba, 3, Dig., 298.

(4) 3, Dig., 300.—Daya Crama Sangraha, ch. III, 6.

[(a) In *Lutchmiedavee alias Canacuma v. Narasimma*, (Dec. of S. U., 1858, p. 118,) the Judges express their "opinion that though such consequences might attach to crime or vice in a Hindu community governed by its own Civil and Criminal law, it cannot do so where, by another system of Criminal law, other specific punishments are awarded to particular offences, and to which they therefore hold that such further penalty cannot be added."]

[(b) Stealing goods, belonging to the family estate.—*C. Lutchmiedavee v. Narasimma*,—Dec. of Mad. S. U., 1858, p. 118.]

dissipate that wealth, in which not themselves alone have an interest, they lose of their inheritance *pro tanto*; it becomes matter of account; and their allotment, on partition, is diminished, by so much as they have squandered or wasted, the difference, if against them, constituting a debt;⁽¹⁾ leaving it to the pursuit of courses, more distinctly criminal, to work at once an entire forfeiture.⁽²⁾ Though our own have not adopted the construction of the Roman law, which regarded and treated the notorious prodigal as *non compos*, nor the policy of Solon, which branded him with perpetual infamy, it may be recollected that dissipation of his feud was, by the law of feuds, a cause of forfeiture. *Si vassallus feudum dissipaverit, aut insigni detrimento deterius fecerit privabitur.*⁽³⁾ And it must be admitted that, among a people with whom a community of interests is the most common form of property, it is expedient that some security, likely to be efficient, should exist, to protect families against the consequences, in any of their members, of vicious extravagance. In assigning the punishment for gaming, Menu is silent as to its excluding from inheritance.⁽⁴⁾ It must be confessed that, with every benefit of distinction and explanation, for want of well-defined cases, judicially ascertained, and authentically reported, much, in enforcing the greater part of the law comprehended in the whole of this chapter, must be left to (what should in judicature

(1) 3, Dig., 299, contr.—Post, p. 214.

(2) 3, Dig., 298, 300.

(3) Wright on Tenures, p. 44, citing Zasius, in Usus Feud, 91 and Crag. de Jur. Feud, 362.

(4) Menu, ch. IX, 221 to 223.

be provided against as much as possible) the delicate discretion of the Judge. In the meantime, the following recapitulation and remarks will be received with the respect due to the authority from whence they proceed. “In regard to the causes of disinheritance, discussed in the Digest, b. v, ch. 5, “sect. I, corresponding with the 5th ch. of Jimuta Vahana, and the 10th sect., ch. 2 of the Mitacshara, “I am not aware, that any can be said to have been “abrogated, or to be obsolete. At the same time, I “do not think any of our Courts would go into proof “of one of the brethren being addicted to vice,⁽¹⁾ or “profusion, or of being guilty of neglect of obsequies, “and duty toward ancestors.^(a) But expulsion from “caste, leprosy, and similar diseases, natural deformity “from birth, neutral sex, unlawful birth, resulting “from an uncanonical marriage, would doubtlessly “now exclude; and, I apprehend, it would be to be “so adjudged in our Adawluts. That the causes of “disinheritance, most foreign to our ideas, are still “operative, according to the notions of their law “among the natives, I conclude from some cases that “came before me, when I presided in Zilla Courts. I “will mention but one, which occurred at Benares, at “the suit of a nephew against his uncle, to exclude him “from inherited property, on the ground of his having “neglected his grandmother’s obsequies. He defended “himself, by pleading a pilgrimage to *Gaya*, where he

(1) See 1, Bombay Rep., p. 144;—where a Will by a father, partially disinheriting one of his sons, on the ground of vicious conduct, was sustained on appeal.

[(a) Vide ante, p. 147, note (a).]

“alleged he had performed them. His plea, joined
 “with assurances of his attending to his filial duty in
 “this respect in future, was admitted; and the claim
 “to disinherit him, disallowed.”⁽¹⁾

It remains to consider one case, that may be said to be, with reference to personal delinquency, *instar omnium*—occurring in every enumeration on the subject, as a cause of exclusion, namely;—*degradation*, or the case of the *outcaste*.^{(2)(a)} Accompanied with certain ceremonies, its effect is, to exclude him from all social intercourse, to suspend in him every civil function, to disqualify him for all the offices, and all the charities of life;—he is to be deserted by his connexions, who are from the moment of the sentence attaching upon him, to “desist from speaking to him, from sitting in
 “his company, from delivering to him any inherited,
 “or other property, and from every civil or usual attention, as inviting him on the first day of the year or the
 “like.”⁽³⁾ So that a man under these circumstances, might as well be dead; which, indeed, the Hindu law considers him to be, directing libations to be offered to *Manes*, as though he were naturally so.⁽⁴⁾ This system of privations, mortifying as it must be, was enforced under the ancient law, by denouncing a similar fate to

(1) Per Mr. Colebrooke, in MSS. penes me.

(2) Menu, ch. IX, 201.—Jim. Vah., ch. V, § 3.
 Mit. on Inh., ch. II, sect. x, § 1, 2.

Sancha and Litchita, 3, Dig., 300.—Nareda, Id., 303.

Devala, Id., 304.—Brahma Purana, Id., 312, 313.

Vishnu, Id., 318.—Bhudhayana, Id., 316.

(3) Menu, ch. XI, p. 185.—Id., IX, 238.

(4) Menu, ch. XI, 183, 184.—Post, Append. to ch. VII, p. 261.—C.

[(a) This disqualification has been removed by Act XXI of 1850.]

any one, by whose means they were endeavoured to be eluded,⁽¹⁾ but this severity was moderated at the beginning of the present age, in which it is said “ the sinner “ alone bears his guilt ; ”⁽²⁾ the law deeming so seriously of non-intercourse, that if one who ought to associate at meals with another, refuses to do so, without sufficient cause, he is punishable.^{(3)(a)} And, in the Bombay Reports, there is an instance of an action of damages, for a malicious expulsion from caste.⁽⁴⁾ The analogy between degradation by the Hindu law, and excommunication, as it prevailed formerly among us, holds, not merely in the general nature and effect of the proceeding, but in the peculiar circumstances of the one and the other being two-fold. As, with us, there was the less, and the greater excommunication, so, of offences considered with reference to their occasioning exclusion, from inheritance among the Hindus, they may also be regarded in a two-fold point of view. This we learn from a case that was before the Sudder Dewanny Adawlut of Bengal, in 1814, in which the official Pundits, having been referred to, distinguished between “ those “ which involve partial, and temporary degradation, “ and those which are followed by loss of caste ; ” — observing that “ in the former state, that of partial degradation, when the offence which occasions “ it is expiated, the impediment to succession is “ removed ; but in the latter, where the degradation is

(1) Menu, ch. XI, 181, 182.

(2) Parasara, General Note, at the end of Menu, p. 363.

(3) Post, Append. to ch. VII, p. 265. — C.

(4) *Durmashund v. Goolashund*, 1, Bom. Rep., pp. 11, 35; and Vid. Post, Append. to ch. VII, p. 267. — E.

[(a) In *Atoocoory Pulliah and others v. Ekkalichanna Variah* (Dec. S. U., 1859, p. 60) where damages were sought on a plea of defendant refusing to eat with plaintiff “ in line,” the case was dismissed, as plaintiff could not show himself to have been endamaged.]

“ complete, although the sinfulness of the offence may
 “ be removed by expiatory penance, yet the impedi-
 “ ment to succession still remains ; because a person
 “ finally excluded from his tribe must ever continue
 “ to be an outcaste.”⁽¹⁾ In the case alluded to, the party
 in question having been guilty of a series of profligate
 and abandoned conduct, having “ been shame-
 “ fully addicted to spirituous liquors ; having been in
 “ the habit of associating and eating with persons of
 “ the lowest description, and most infamous character ;
 “ having wantonly attacked and wounded several
 “ people at different times ; having openly cohabited
 “ with a woman of the Mahomedan persuasion ; and
 “ having set fire to the dwelling-house of his adoptive
 “ mother, whom he had more than once attempted to
 “ destroy by other means,” the Pundits declared, that
 “ of all the offences proved to have been committed by
 “ *Sheanauth*, one only, namely, that of cohabiting
 “ with a Mahomedan woman, was of such a nature, as
 “ to subject him to the penalty of exclusion from his
 “ tribe, *irrevocably* ;”—and of this opinion was the
 Court. The power to degrade is, in the first instance,
 with the *caste* themselves, assembled for the purpose ;
 from whose sentence, if not acquiesced in, there lay
 an appeal to the King’s Courts.⁽²⁾ In the case that
 has been cited, the question arose incidentally, upon
 a claim of inheritance ; and that case shows that the
 power amounts to a species of *ensorship*, applicable to

(1) *Sheanauth Rai v. Mussummant Dayamyee* ; Beng. Rep.,
 1814, p. 434.—1, Dig., 279, 288.—And see the cases on the
 subject, in 1, Bombay Rep., pp. 11 and 35.

(2) Post, Append. to ch. VII, p. 267.—E.

the morals of the people, in instances to which the law, strictly speaking, would not perhaps otherwise extend. The sentence can be inflicted only for offences committed by the delinquent in his existing state;⁽¹⁾ and, where the offence is of an inferior nature, to justify it, it must have been repeated.⁽²⁾ What distinguishes degradation from other causes of exclusion is, that it extends its effects to the son, who is involved in his father's forfeiture, if born subsequent to the act occasioning it.⁽³⁾ Born before, he is entitled to inherit, and takes, as though his father were dead.⁽⁴⁾ Whereas, in every other instance of exclusion, the son, if not actually in the same predicament with his father,⁽⁵⁾ succeeds, maintaining him; the same right extending as far as the great-grandson.⁽⁶⁾ And, with regard to the father, or delinquent himself, where the exclusion from inheriting is not for natural defects, the cause must have arisen, previous to the division, or descent of the property; if it do not occur till after, the succession is not divested by it.⁽⁶⁾ Hence, adultery in the wife during coverture, bars her right of inheritance;⁽⁷⁾—divesting it also, after it has vested;—the Hindu widow resembling, in this respect, the con-

(1) 3, Dig., 312.

(2) 3, Dig., 304.

(3) Devala, 3, Dig., 304.—Vishnu, Id., 316.

Daya Crama Sangraha, ch. III, vii, 152.

(4) 3, Dig., 321.

(5) 5, Jim. Vah., ch. V, § 19.—Mit. on Inh., ch. II, sect. x, § 3.
3, Dig., 304, 324.—Daya Crama Sangraha, ch. III, vii, 13.

(6) Mit. on Inh., ch. II, sect. x, 6, note.—3, Dig., 479.

(7) Mit. on Inh., ch. II, sect. i, 30, 39.

Vrihaspati, 4.—3, Dig., 458.—Vridhha Menu, Id., 478.

Beng. Rep., ante, 1805, p. 64.

Post, Append. to ch. VII, p. 269.—S. 270.—C.

[(a) Ante, p. 146, note (a).]

dition of ours in most instances of copyhold dower, and holding it, like her, *dum casta fuerit* only ; according to an opinion of great respectability, that for loss of caste, unexpiated by penance, and unredeemed by atonement, it is forfeited.⁽¹⁾ In general, the law of disqualification applies alike to both sexes.⁽²⁾

It appearing, then, that the incapacity to inherit, except in the instances of the *outcaste*,^(a) is personal merely,^(b) that one excluded may be said, in every case, to be entitled to be maintained ;⁽³⁾ and that, in most, it is in his power, at any time, to restore himself to his rights ;—whatever may be thought of the wisdom of some of these provisions, it cannot be said that they are universally destitute of justice, or, in any instance, totally devoid of humanity. Nor in comparing this part of the law with our own, ought we to forget, that the latter has made none, for preventing the absolute disinheriting of children by Will.

It will appear, in a subsequent chapter,⁽⁴⁾ that, on entry into either of the two religious orders, the *devotee* (like the professed monk with us before the Reformation) becomes *civiliter mortuus* ; and the next heir succeeds, as though he were naturally deceased.⁽⁵⁾ And, as the *devotee* himself, abdicating secular concerns, is incapacitated from inheriting, so is the religious *pretender*,

(1) Post, Append. to ch. VII, p. 272.—C.

See also 3, Dig., 479.

(2) Mit. on Inh., ch. II, sect. x, 8.

(3) Post, ch. VIII, p. 164.

(4) Post, ch. IX, p. 176.

(5) Menu, ch. IX, 211, 212.

Vasishta, Mit. on Inh., ch. II, sect x, § 3.
3, Dig., 3, 7.—Catyayana, Id., 326.

[(a) Ante, p. 150, note (a).]

[(b) Ante, p. 146, note (a).]

and the eventual *apostate*.^(a) Under the former term may be included *hypocrites* and *impostors*, used synonymously for those who, usurping sacred marks, practice austerities with an interested design.⁽¹⁾

The remaining cause of exclusion to be noticed is, an *incompetent marriage*, that is, where the husband and wife are descended from the same *stock*. Such a marriage being incongruous, the issue of it cannot inherit, excepting among Sudras. And the consequence is the same, where the marriage has not been according to the order of *class*.⁽²⁾

The heir, or heirs, under no disability, having succeeded to the inheritance, it is next to be seen, to what *charges* this is liable.

(1) Devala, 3, Dig., 304, 315.

Menu, ch. IV, 200, 211.—Id., ch. VII, 154.

Jim. Vah., ch. V, 14.—3 Dig., 327.

(2) Ante, p. 26.

[(a) Act XXI, of 1850 secures to persons changing their religion their civil rights; and such persons have the option of either renouncing the old law with their former creed or abiding by it, notwithstanding such change of faith. In the latter case as regards Hindus, their rights will be determined by the Hindu law.—*Abraham v. Abraham*.—Dec. of Privy Council, 13th June 1863.]

CHAPTER VIII.

CHARGES ON THE INHERITANCE.

THE charges, to which the inheritance is liable, are of three kinds. First, debts, and other obligations, in the nature of legacies; Secondly, certain specific duties to be provided for out of it, where it has descended to a single heir, and out of the common fund, where it has vested by survivorship, in undivided parceners; Thirdly, maintenance, of all requiring, and entitled to it.

1. The first charge to be noticed is the payment of debts; an obligation which the Hindu law inculcates upon the heir, as of importance to the peace of the deceased, equally with the performance of his funeral ceremonies;—the two together constituting the true consideration for inheritance.⁽¹⁾ The most general position respecting it is, that debts follow the assets into whosoever hands they come;⁽²⁾ the obligation to pay attaching, not upon the death only of the ancestor, but on his becoming an anchorite, or having been so long absent from home, as to let in a presumption of death.^{(3)(a)} But to be thus binding, a debt must have been incurred on a good consideration. This excludes such as have arisen

(1) Ante, p. 117.—Menu, ch. XI, 66.

*1, Dig., 267.—266, note.

(2) Yajnyawalkya, 1, Dig., 270, and many subsequent pages.
Post, Append. to ch. VIII, pp. 280, 282.

(3) Vishnu, 1, Dig., 266, et seq.

[(a) For length of absence that raises this presumption.—Vide Ante, p. 111, note (a).]

from gaming, or the purchase of spirituous liquors,⁽¹⁾ except in privileged times, when excesses may be indulged.⁽²⁾ Debts due for tolls and fines are also excepted;⁽³⁾ the reason of which may be, that they are to be regarded as ready money payments, for which credit will have been given, at the risk of him by whom they ought to have been received. And, where the consideration of a debt may have been such, as in its nature to charge the common fund; as for the nuptials of any of the family, the expense attending them must have been reasonable, according to the usage, and means of the family; beyond which, if carried to excess, he, who so imprudently contracted it, will be alone liable, unless it have been adopted by the rest.⁽⁴⁾ Contracted fairly, for the use of the family, by whatsoever member of it, it binds the whole.⁽⁵⁾ Much as is said everywhere of the religious tie the son is under, to pay the debts of his ancestor, it seems settled at Bengal, that it has no legal force, independent of assets.⁽⁶⁾ But, to the southward, the doctrine of the Mitacshara, supported by the Madhavya and Chandrica, is said to render the payment of the father's debts with interest, and the grandfather's without interest, independent of assets, a legal,^(a) as well as,

(1) 2, Bombay Rep., p. 200.—Id., p. 203, note.
Post, Append. to ch. XII, p. 456.

(2) Menu, ch. VIII, 159.—1, Dig., 296, 307.
Vrihaspati, 1, Dig., 304, 305, 311.

(3) 1, Dig., 304, 307, 309.

(4) 1, Dig., 294, 295.

(5) Monn ch. VII, 166.—1, Dig., 282, et seq. and 290.
Beng. Rep., Cause 12 for 1817, p. 607.
Post, Append. to ch. XII, p. 458.

(6) 1, Dig., 320.—Note to Id., 266.

[(a) The Courts do not feel themselves bound by this directory precept, and in *Kasi Lakshmipati Sastrulu v. P. Buchireddi and another* (Dec. S. U., 1860, p. 78) and other similar cases, the Sudder Court have ruled that sons are liable to the full extent of assets only.]

sacred obligation.⁽¹⁾ In the discharge of it, a priority also is prescribed, suitable, in one respect, to the genius of the law : depending, first, on *class* ; next, upon the *time* when they have been severally contracted. Where creditors are, of different classes, the Brahmin is to be preferred in payment ; and others according to the order of their class ;—while, among creditors of the same class, the payment is to be in the order, in which the respective debts due to them were contracted. But, as there is no fraction of a day, where debts due have been contracted on the same day, the payment is to be *pari passu*, by a proportionate distribution of the assets ; excluding altogether the creditor who, possessing a pledge, has trusted to it for his recovery.^{(2)(a)} To these rules, there is an exception in favor of one, whoever he may be, and whensoever the debt due to him was contracted, with reference to assets produced by his particular loan ; upon which he has a sort of *lien*, being entitled to be paid out of them in the first instance ; and in preference to any other claimant.⁽³⁾ The course for the payment of debts, on partition, may be either by disposing of a sufficient part of the property for the purpose, and thus paying them off at once ; or, by apportioning them among the parceners, according to their respective shares ;—an arrangement, which, to be binding upon creditors, would require their assent.⁽⁴⁾ Modified, as the details of Hindu law are, everywhere

(1) 1, Dig., 270.—Post, Append. to ch. VIII, p. 274 to 279.

(2) 1, Dig., 376 to 379.

(3) Gatyayana, 1, Dig., 380.

(4) Jim. Vah., ch. I, 48.—Post, Append. to ch. VIII, p. 233.

[(a) In illustration of this, the non-liability of sons to discharge a loan raised by their father by mortgaging his pension, may be quoted.—*Shureef Ameer v. Kukeer Saib and another*.—1, Dec. M. S. U., p. 280.]

by local usage and practice, how far the whole of the ancient provisions for the payment of debts are at present applicable, must be left to the discretion of Courts, exercising jurisdiction, within particular limits. What remains to be adduced on the subject will be more properly reserved for the chapter on Contracts.¹

Connected with the above duty, is the discharge of obligations, resting on the intention of the deceased, sufficiently manifested; since, though nothing occurs in the Hindu law expressly in favor of the testamentary power, as exercised under other Codes, it provides distinctly for the performance of promises by the ancestor in his lifetime, to take effect after his death; and, to this extent, a "*friendly gift*," as it is called, not being an *idle* one, and far less one founded on an *immoral* consideration, being available in law as a charge upon heirs, may be assimilated to a legacy.² But, according to the doctrine of the Mitacshara, such a gift, referring to property held in common, in order to be good, must have had the consent of the deceased's coparceners;⁽³⁾—as, if made by a widow, it must have had that of her guardian, and next heirs.⁽⁴⁾ Like a legacy, also, it is liable to lapse by the death of the donee in the life-time of the donor, with this peculiarity however, that, if once vested in the donee, it is partible

(1) Post, ch. XII, p. 268.

(2) Menu, ch. VIII, 159.—Jim. Vah., ch. I, § 47. °
Catyayana, 1, Dig., 299.—2, Id., 96.—3, Id., 389,
1, Dig., 247, 333 to 305.—Post, p. 249, et seq.—and Append.
to ch. XI, pp. 426, 435.—C.

(3) Mit. on Inh., ch. I, sect. i, § 30.

(4) Post, Append. to ch. XI, pp. 444, 445.—S. contra.

among his co-heirs, if he have any;—if, never vesting in him, in consequence of his death during the life of the donor, it descends to his heir; the latter takes it, not liable to be shared.⁽¹⁾ And as, with us, necessary funeral expenses are allowed the executor, previous to all other debts and charges, to this place may be referred the duty enjoined by Vrihaspati to the Hindu heir, of setting apart a portion of the inheritance, to defray, on behalf of the deceased, his monthly, six-monthly, and annual obsequies;—on the ground of wealth being intended for spiritual benefit, as well as for temporal enjoyment.⁽²⁾

2. Not less obligatory upon the heirs is the charge for the *initiation* of the uninitiated, and the *marriage* of the unmarried members of the family. Initiation involves a succession of religious rites, attended with more or less of expense; commencing with purification, and terminating in marriage. They are ten in number; of which marriage is the only one competent to females and Sudras; the rest being confined to males, of the three superior classes.⁽³⁾ The duty of initiating attaches to those who have themselves been initiated; and the provision for it is to be made before partition, out of the common stock.⁽⁴⁾ It has been already intimated,⁽⁵⁾ that charges of this nature, to

(1) 3, Dig., 389.

(2) Jim. Vah., ch. XI, sect. vi, 13.—Vrihaspati, 3, Dig., 532.
Post, Append. to ch. VIII, p. 255.

(3) Note to Mit. on Inh., ch. I, sect. vii, 3.
Note to Datt. Mim., sect. iv, 23.—Note to 3, Dig., 104.—Id., 94.
Vrihaspati, 3, Dig., 101.

(4) Mit. on Inh., ch. I, sect. vii, 3, 4.—3, Dig., 96, 98, 102.
1, Bombay Rep., p. 418.

(5) Ante, p. 157.

be available against the inheritance, must be reasonable; though this is seldom attended to. They regard brothers and sisters only, not extending to collaterals.⁽¹⁾

3. The general claims of the dependent members of the family come lastly to be considered; of which the first to be noticed is that of the widow, to maintenance, where she does not take as heir.⁽²⁾ In awarding it to her, what she possesses as *Stridhana*, or her peculiar property, is to be matter of account; the utmost that she can claim being, to have it made up to her, equal to what would be a son's share, in the event of partition.⁽³⁾

The right of the widow, being established, it remains to be seen, in what this charge on the inheritance consists, and how it is to be provided for.⁽³⁾ It may be supplied by an assignment of land, or an allowance of money; in either case proportioned to her support, and that of those dependent upon her, including the performance of charities, and the discharge of religious obligations; and this always, with a reference to the amount of the property, so as, at the utmost, (as has been said,) not to exceed a son's, or other parcener's share. In whatever way the provision is made, care should be taken to have it secured. The manner of doing this is discretionary, there being no special law, directory herein. Whether, in estimating her *Stridhana* on the occasion, her clothes, ornaments, and the like, are to be taken into account, or only such articles of her property as are productive of income to her, or con-

(1) Post, Append. to ch. VIII, pp. 286, 288, 312.—C.

(2) Post, Append. to ch. VIII, pp. 290, 292, 296.—Vid. tamen, Id., 297.—E.

(3) Post, Append. to ch. VIII, pp. 299 to 304.

[(a) For decided cases, vide Post, ADDENDUM, tit. *Maintenance*.]

ducive to her subsistence, does not distinctly appear though the restricting the account to the latter would seem to be reasonable, considering the object.⁽¹⁾ An opinion, that her maintenance should be independent of her peculiar property, is unsupported.⁽²⁾ As chastity is a condition of her inheriting, on failure of male issue,⁽³⁾ so, it would seem that, by a want of it, she forfeits her right to maintenance;⁽⁴⁾ as under similar circumstances, does the wife her *alimony*, by the ecclesiastical law of England; leaving it a question, however, in the case of the Hindu, whether, notwithstanding she be not entitled (as *outcastes* generally are,) to food and raiment.⁽⁴⁾ Where her husband's property proves deficient, the duty of providing for her is cast upon his relations; and, failing them, upon her own; an obligation that attaches, though she should have wasted what was assigned to her for the purpose; giving color to the law, requiring her to live with them, that they may watch and control her conduct.⁽⁵⁾ The *grandmother* also, forming a part of the family, is alike entitled to maintenance;⁽⁶⁾ as are also the step-mothers.⁽⁷⁾ *Married sisters* are considered as pro-

(1) Post, Append to ch. VIII, p. 306.—F

(2) Append., p. 379 —E. To ch. VIII, p. 307.

(3) Ante, ch. VI, p. 124.

(4) Post, Append to ch. II, p. 39, and ch. VII, p. 309 —C. It has been suggested, that the consequence of unchastity by a Hindu female attaches only where it is of a special nature; as by the wife, or widow, of a preceptor, with his pupil, or with a man of an inferior caste.—But, query, What authority is there for so restricting it?

(5) Mit on Inh., ch. II, sect. i, 7, 37.—Id., sect. x, 14, 15

Jim. Vah., ch. V, 19.—3, Dig., 324, 479.

Post, ch. X, p. 237.

(6) 3, Dig., 12, 27, 30, 90.

(7) Daya Crama Sanoraha, ch. VII, 3.—Rnt see Id., 7, 8

vided for.⁽¹⁾ *Unmarried* ones, maintainable out of the family property till marriage, are, upon partition, a charge upon it, to the extent, as is commonly said, of a quarter of a share;⁽²⁾ an allotment explained by various authorities, including the Chandrica and Madhavya, as meaning a sufficiency only for the expenses of their marriage; and *widow* ones, not otherwise provided for, are entitled to be maintained.⁽³⁾ The difficulty attending the apportionment to a sister, of an aliquot part of a brother's share, is removed, by showing, that the allotment intended is not a fourth to each sister, to be deducted from the share of each brother, (which, according to the state of particular families would, it is admitted, render the partition, as between brothers and sisters, quite disproportionate,) but a participation, out of the whole, equivalent to the fourth of a brother's share, without regard to the number of brothers.⁽⁴⁾ Where the widow succeeds as heir, she takes, subject, among other things, to defray the education and nuptials of an unmarried daughter;⁽⁵⁾—as also to maintain those whom the deceased was bound to support.

But neither are these all the charges to which the inheritance is subject, before it is distributed. It has been seen that, in the Sudra class *illegitimate* sons succeed as

(1) Post, Append. to ch. VIII, p. 314.—C.

(2) Mit. on Inh., ch. I, sect. vii, 5, 6.

Jim. Vah., note to ch. XI, sect. i, 20.

Menu, ch. IX, 118.—3, Dig., 90, et seq.

Post, Append. to ch. VIII, pp. 311, 313.—C.

(3) 3, Dig., 92, et seq.

(4) Mit. on Inh., ch. I, sect. vii, 5, et seq.

(5) Jim. Vah., ch. XI, sect. i, § 63, 66.

3, Dig., 439.—1, Id., p. 321.—3, Id., 461.

heirs, wholly, or partially, according to the state of the family in that respect;⁽¹⁾ and, in all the classes, as with us, it is the duty of the parent to maintain issue of this description; an obligation that attaches to the survivors, and is to be provided for upon partition.⁽²⁾ The mothers of such children also have the like claim, which the providence of the law, not content with securing for them, in all ordinary cases, has been careful to charge upon heirless property, in the hands of the king.⁽³⁾ The claim of another class of dependents remains to be noticed,—namely, that numerous one, the subject of the preceding chapter, excluded, some by their destiny, others by various disabilities, from inheritance; but all, by the humane provision of the law, entitled, out of it, to an abundant maintenance;⁽⁴⁾—all, unless the *outcaste*,⁽⁵⁾ and his issue subsequently born, are to be excepted.⁽⁶⁾ According to Menu, the substituted heir is to provide it for life, without stint to the best of his power, subject to penalties and consequences, that have been already stated.⁽⁶⁾ With regard to the *outcaste* and his issue, authorities differ;⁽⁷⁾—upon which it is observable, however, that he is not excepted by Menu, and that he is admitted by Yajnyâwalcyâ. It is true, the measure is restricted to

(1) Ante, pp. 56, 121.

(2) Mit. on Inh., ch. I. sect. xii. s. 3.
Ante, p. 57.

(3) Mit. on Inh., ch. II, sect. i, § 7, 28.
Jim. Vah., ch. XI, sect. i, § 48, 52.

(4) Menu, ch. IX, 202.—3, Dig., 318.

(5) Jim. Vah., ch. V, 11.

(6) Ante, p. 55.—Menu, ch. IX, 202.

(7) Menu, ch. IX, 202.—Mit. on Inh., ch. II, sect. x, 1.
Jim. Vah., citing Devala and Baudhayana, ch. V, 11, 12.

[(a) Ante, p. 150, note (a).]

“ food and raiment ; ”⁽¹⁾—to which, if the *outcaste* be admissible, it would seem difficult to exclude the adulterous widow. Of persons disqualified to inherit, their childless wives, continuing chaste, are moreover to be provided for ; as are also the maintenance and nuptials of their unmarried daughters. So anxiously careful has the Hindu law been, that there shall exist no final distress in families, while means exist to prevent it, even in instances of the most undeserving.

Thus has been seen, in this, and the two preceding chapters, how inheritance vests, on the death of the owner, subject to disabilities, and charges. But it results from the interest that sons, under the Hindu law, possess by birth in the family property, that the owner willing, or under particular circumstances independent of him, it may, as it were, be anticipated, by a division among them in his life. Or, if left to descend, descending among them, as it must, in common, they may themselves divide it. This leads to the consideration of *Partition* ; an extensive title in the Hindu law, upon which it is proposed to treat in the next chapter.

(1) Mit. on Inh., ch. II, sect. x, &c.

CHAPTER IX

ON PARTITION.

AS PARTITION, in the life of the parent, is, in modern times, of but rare occurrence, it has been thought by some, that any account of the law of it here might reasonably be dispensed with; and this the rather, that it can scarcely come in question in the King's Courts; restricted as these are generally, in administering native law, to matters of Inheritance and Contract. But, to suppress this branch of it would be to exhibit the subject in a mutilated form; beside that partition in the one case may serve sometimes, by analogy, to illustrate, or explain it, in the other. It is proposed, therefore, to give here a summary of both, in their natural order: first as it may take place in the life of the father; and, secondly, after his death, among his representatives; premising, to the detail of the latter branch, some account of the state of a Hindu family, as it exists on the descent of the property, while it remains yet undivided.

Partition, in its most general sense, comprehending, as well the division of the paternal property during the life of the father, as that which usually takes place, at some period or other, among co-heirs, is the adjusting, by distribution, the possession of differen-

parties to a pre-existing right :⁽¹⁾ as the divesting of exclusive rights in specific portions of property, and re-vesting a common one over the whole, is implied in re-union.⁽²⁾ Whether it occur during the life, or not till after the death of the owner,—in either case, it is founded on a claim of succession, originating in birth : inchoate, and contingent during the life of the father ; and, generally speaking, certain and indefeasible, upon his death.⁽³⁾ The contingency upon which it depends during his life, is of two kinds ; either his will, that it should so take place ; or the extinction of his own right in it, in point of law, by means remaining to be stated : in which latter case, the right of the sons becomes absolute, the same as if he were dead.⁽⁴⁾ Upon these considerations, the writers on Hindu law discuss it under the head of inheritance ; with which it is so far connected, that it follows, of course, at the option of parties, after the succession has once vested by the death of the prior owner, and of which it is a sort of anticipation, when it takes place in his life-time.

The inchoate right, that has been alluded to, renders the sons, as has been seen, in some sort, co-proprietors with the father of the family property ;⁽⁵⁾ to the extent

(1) Jim. Vah., ch. XI, sect. i, 26.

Mit. on Inh., ch. I, sect. i, 4, and note.

(2) Mit. on Inh., ch. I, sect. i, 4, and note.

Jim. Vah., note to ch. XII, 1.

(3) Ante, p. 159.—Post, Append. to ch. XI, p. 427.

(4) Gautama : cited in Mit. on Inh., ch. I, sect. i, 23.

Compared with note to Jim. Vah., ch. I, § 19.—Also, Id., § 31.

(5) Ante, p. 74, et seq.—2, Dig., 150.

Post, Append. to ch. IX, p. 315.—C.

of giving them, under particular circumstances, claims upon it in his life, which, consistently with the spirit and intention of the law, it is not in his power altogether to bar. Vesting in them, however, by birth,⁽¹⁾ they attach more upon that part of it that has been inherited by him, than upon what he may have himself acquired; the title to property descended from ancestors being considered to be in him and them, so far the same,⁽²⁾ that, upon partition by him taking place, the law regulates the distribution; whereas, with regard to the rest of what he possesses, it leaves it more at his discretion. This distinction, with whatever other peculiarity belongs to this part of the subject, will appear on investigating it under the following heads, viz.—

- 1, *When* partition takes place in the life of the father;
- 2, *Among whom*;
- 3, *How*.

1. Upon the first point, various opinions exist, according to which the number of periods is differently assigned, by different writers, for the attaching of the claim in question in sons. Most of them include, and all imply, the natural demise of the father, as one; but this is an occasion of inheritance, not necessarily of partition, as has been properly remarked.⁽³⁾ Omitting this, therefore, as one, the simplest, and perhaps the most tenable position on the subject

(1) Mit. on Inh., ch. I, sect. i, § 23, 27.

(2) Jim. Vah., ch. II, § 15, et seq.

Mit. on Inh., ch. I, sect. ii, § 6.

Id., sect. v, § 3.—Vishnu, 2, Dig., 538.

(3) Viramitrodaya. Note to Mit. on Inh., ch. I, sect. ii, § 7.

is, that independently of the case of his natural death, it attaches *with* his consent; or *without* it, under some one or other of the circumstances hereafter mentioned, subject to the remarks accompanying their enumeration. Whatever might be the case among the Hebrews, no Hindu can, according to the law, as it prevails in the Bengal Provinces, under any circumstances, say to his father, in the peremptory language of the prodigal, "Father, give me the portion of goods that falleth to me." The father may abdicate in favor of one, or of all, according to the limits imposed upon him by the law, if he thinks proper; but, with the exception of two cases, partition among the Hindus, in the life-time of the father, whether of ancestral, or acquired property, would seem to be at his will, not at the option of his sons; ⁽¹⁾ the excepted cases being, that of his civil death, *by entering into a religious order*, and that of *degradation*, working a forfeiture of civil rights. ⁽²⁾ And, even with regard to these, it is not the will of the sons that operates, but the laws; which, in favor of the title by birth, casts upon them the succession, before the arrival of the time for its regular devolution, by the natural death of the parent. A text indeed of Menu ⁽³⁾ (already cited) is referred to, as showing, that, of ancestral property, belonging to the

(1) Menu, ch. IX, 104.—Sancha and Lichita, 2, Dig., 533, 536. Nareda.—Vyasa, 3, Dig., 35.—Gautama, 2, Dig., 535. Baudhayana, Id., 536.—Jim. Vah., ch. II, § 8. Mit. on Inh., ch. I, sect. ii. Post, Append. to ch. IX, p. 319 to 323.

(2) Menu, ch. IX, 209.

(3) Mit. on Inh., ch. I, sect. v, § 11.

[a] Vide note a Post, page 174.]

father, the sons may at their pleasure exact a division of him, however reluctant; and it is true, (as has been already intimated,) that their claim upon property descended is stronger than upon what has been otherwise acquired; but the inference, drawn in the *Mitacshara*, is at variance with the current of authorities, including Menu himself;⁽¹⁾ whose obvious meaning, in the text referred to, is simply, that ancestral property *recovered*, without the use of the patrimony, classes, upon partition, with property *acquired*. Not to mention, that the text in question is differently rendered in the translation we have of the “*Institutes*,” by Sir William Jones;⁽²⁾ in which it has nothing to do with partition by the father, but regards partition among brothers after his death. Moreover, Jagannatha, in his *Digest*, virtually negatives the inference deduced from it, and other correspondent texts, which he examines; concluding that, if it be against the father’s inclination, partition, even of wealth inherited from the grandfather, shall not be made.⁽³⁾ It is said farther in the *Digest*,⁽⁴⁾ that, of patrimony inherited, a partition may be obtained from the father by application to the king, in case of oppression by a step-mother; but, as to the kind and degree that may suffice to warrant such an interference, the author is silent. The position is not

(1) Menu, ch. IX, 104.

(2) Menu, ch. IX, 209.—But, according to Mr. Colebrooke, the version by Sir W. J. is from the context, and not literal.
See note to 3, Dig., 34.

(3) 3, Dig., 45.

(4) 3, Dig., 47.

supported by anything to be found in the *Daya Bhaga* of Jimuta Vahana, or in the *Mitacshara*; and the compiler's authority is not, of itself, sufficient to establish one of so questionable a nature. Other periods indicated, are the extinction of the father's passions, or the arrival of the time for the mother to be past child-bearing, the sisters also being married; when, according to Nareda and others, partition of ancestral property may be exacted by the sons, in opposition to the father.⁽¹⁾ The marriage of sisters is confessedly mentioned as a circumstance only that should precede, but not as conducing in any degree to accelerate, partition.⁽²⁾ With respect to the doctrine, as regarding the period when an increase of family is no longer to be expected, it does not appear to be generally adopted, except, where this state of things may have determined the father to retire from the world and its concerns altogether; a measure that is admitted, on all hands, to constitute a ground for their claims being realized.⁽³⁾ But, though the expiration of the time for child-bearing may not enable them to enforce a partition, which the father is not prepared to concede,⁽⁴⁾ it is, in regard to ancestral property, held by the founder of the Eastern school of law, supported by his commentator Srikrishna, as well as by Raghunandana, that it cannot take place even *with the*

(1) Jim. Vah., ch. I, § 32, 34.

Mit. on Inh., ch. I, sect. ii, § 7.—3, Dig., 48.

(2) Jim. Vah., ch. I, § 47.—3, Dig., 52.

(3) Jim. Vah., ch. I, § 29, and note.

(4) Jim. Vah., ch. II, III.

father's consent, while the wife continues capable of being a mother; it being required that, to the will of the father to make it, there be joined the mother's incapacity to bear more children,—on the ground, that future issue, have, by birth, a special interest in property of the father, that has descended.⁽¹⁾ The possibility, however, of its so happening, has led to a provision in that event, for after-born sons;⁽²⁾ different opinions existing, whether it be to be supplied by the father, or by the brothers who have received their shares. Upon which it is said, that, where pregnancy is apparent at the time, either the partition should wait, or a share be set apart, to abide the event: but that, if it were then neither manifest, nor apprehended, in such case, should a son *who was at the time in the womb*, be born after, he should obtain his share from his brothers, by contribution; while a *subsequently begotten* one shall have recourse only to the remaining property of the father; succeeding to the whole exclusively, or dividing it with such of the brothers as may have become re-united to the common parent; any acquisition by a re-united father, through means of his individual wealth, or personal exertions, belonging exclusively to the son, born after partition, and not to

- (1) Nareda, 2, Dig., 113.—3, Id., 50.
 Jim. Vah., ch. I, § 45.—Id., ch. II, § 1. And note to § 7, 33,
 and note to § 31.
 Sricrishna, note to Id., ch. I, § 50.
 Balambhatta, note to Mit. on Inh., ch. I, sect. ii, § 7.
 Post, Append. to ch. IX, p. 324.—S.
- (2) Menu, ch. IX, 216.—3, Dig., 50.—Id., 434 to 439.
 Mit. on Inh., ch. I, sect. vi, 2, 46.
 Daya Crama Sangraha, ch. V, 10, et seq.

him in common with another re-united. And, where there is no after-born issue, the sons, who had received their shares, take by inheritance what their parents leave.⁽¹⁾ The objection arising from the competency of the wife to continue bearing children, applies equally to a second, whom the father may have, at one and the same time; the providence of the law having regard to the interests of sons generally, so they be sons of the same father.⁽²⁾ Upon this principle, it is said, that where sons apply to the king for partition, he must first enquire whether the mother be past child-bearing;⁽³⁾ and the same reservation is inculcated, where it attaches upon the father retiring with his wife, as a devotee, to the wilderness.⁽⁴⁾ Adverting to the various opinions that have been entertained on the question, the practical difference among them (says an eminent commentator) regards chiefly the cases of vice and profligacy, with lasting disease, and consequent disqualification, and incapacity; subjoining, however, that, without consent of the head of the family, it is not in such cases allowed by the prevalent authorities of Bengal, unless the vice or disease be such, as to induce degradation from caste.⁽⁵⁾ If, in any case, as in that of the protracted absence of the father from home,⁽⁶⁾ there should arise a question of *management*, defeasible on

(1) Mit. on Inh., ch. I, sect. vi, 16.

(2) Notes to Jim. Vah., ch. I, 45.—Ch. 41, 1.

(3) 3, Dig. 51.—Ante, p. 170

(4) Note to Jim. Vah., ch. I, 39.

(5) Mr. Colebrooke, MS. *penes me*.

(6) Harita, 2, Dig., 527.

Bengal Rep., ante, 1805, p. 96.

Post, Append. to ch. IX, p. 316.—C. 317.—T.

his return, or recovery, whichever of the sons is the most conversant with business, is the proper one to interfere on the occasion; not primogeniture,⁽¹⁾ but capacity being, for this purpose, considered as affording the best rule in a family; though, other things being equal, the elder has undoubtedly the preferable title,⁽²⁾—the same as, where the management of the property is to be provided for, among co-heirs.⁽³⁾

In the provinces dependent on the Government of Madras, and elsewhere in the peninsula, the right of the son to exact partition of ancestral property, independent of the will of the father, appears authorized, but not without the existence of circumstances to warrant the measure;⁽⁴⁾ such as the father having become superannuated, and the mother past child-bearing; the sisters also married.⁽⁴⁾ And there are two occasions, upon either of which, whether the Hindu law prevails, dominion may be transferred from the father in his life, without his consent, whether the property claimed by the sons to be divided be ancestral, or acquired. These are, voluntary *devotion*, by which the father is considered as having renounced it, and *degradation* from caste, by which it is forfeited. Upon these it will be proper for a moment to dwell; taking *degradation* first.

It is to be remembered that, by our own law, as old

(1) Post, Append. ch. IX, p. 321—E. 326, 331, 333, 335.—C. 342—E.

(2) Post, p. 183.—Menu, ch. IX, 105, et seq.
2, Dig., 528.—Sancha and Lichita, cited in Jim. Vah., ch. I, 42.
2, Dig., 533.—Jim. Vah., ch. I, 37, 43.
Nareda, 2, Dig., 532.—Post, Append. to ch. IX, p. 326.—C.

(3) Post, p. 189.

(4) Mit. on Inh., ch. I, sect. ii, 7.—Id., v, 5.

[(a) The authorities quoted in support of this position do not fully bear out the text in regard to ancestral property. In *Nagalinga Mudali v. Subbirmaniya Mudali*, where the matter is fully discussed, it was decided that a son, and therefore a grandson, *irrespective of all circumstances*, may compel a division of ancestral family property against the will of his father or grandfather.—I, Madras High Court Reports, p. 77.—See also I, Mad. S. U. Dec., p. 210.]

as the time of the Saxons, property is, with us, forfeited by crime; as, by the feudal law also, as introduced among us at the Conquest, it escheats for the same cause, on attainder. Degradation from caste, by the Hindu law, answers to attainder by ours;⁽¹⁾ except that, under the former, instead of either the king, or the lord taking, the succession, upon the delinquency of the owner being ascertained by sentence, vests in his heirs; as it does indeed with us after a time, under the law of escheats, where the superior efficacy of that of forfeiture to the Crown does not intervene. Expiation obviates its effects, if made in time: but it comes too late to revest the property, after partition has taken place.⁽²⁾ It is unnecessary to pursue this subject further here, having been already treated of, in a former chapter.⁽³⁾

2. Another undoubted one, so far as it still subsists, is, what we should call his *entry into religion*; that is, his assumption of the one, or other, of two religious orders, by which a Hindu is accounted (as were monks, with us, before the Reformation) dead in law; the consequence also being the same, that his heirs take his estate.⁽⁴⁾ They constitute the third and fourth stages, in the progressive advancement of the Hindu, from birth to death; the first being that of a *student*;

(1) Jim. Vah., ch. I, 34, 41, 44.

Note to Mit. on Inh., ch. I, sect. ii, 7.

Devala, 2, Dig., 522.—Nareda, Id., 523.

(2) Menu, ch. XI, 228.—I, Dig., 270, 298, 312.
2, Dig., 525, et seq.

(3) Ch. VII, p. 150.

(4) Harita, 2, Dig., 536.—Jim. Vah., ch. II, § 57.

Menu, ch. IV, i.—Id., VI, i, 33, 38.

Sidh Narain v. Futeh Narain, Beng. Rep., ante, 1805, p. 36.

the second, that of the married man, or *householder*.⁽¹⁾ In entering upon the first of the two in question, viz., that of *hermit* (*Vanaprastha*), for which the appointed age is fifty,⁽²⁾ he may repair to the lonely wood, accompanied by his wife, "if (says Menu) *she choose to attend him*."⁽³⁾ And as, therefore, in such event, a prospect of future issue may still exist, while it continues to do so, partition will be premature, so far at least as regards property inherited, according to the authorities that have been already referred to.⁽⁴⁾ The next is that of *Anchoret* (*Sanyasi*, or *Yati*), when there remains nothing to prevent it from immediately taking place. The nature and condition of these orders is fully explained by Menu, who has devoted a chapter to the subject;⁽⁵⁾ and if, as would appear, the order of *Anchoret* was left at the beginning of the present (*Cali*) age subsisting, when that of the *Hermit* is said to have been abrogated,⁽⁶⁾ it must have been upon the ground that *retirement to the wilderness* might, without material prejudice to the interests of life, be left open,

(1) Menu, ch. VI, 87.—Note 60 to Datt. Mim., p. 22.—Ante, p. 23, Note (d).

(2) Jim. Val., ch. I, § 39.

(3) Menu, ch. VI, 3.

(4) Of persons of this description in former times, the forests and wilds of the country were full, as appears by the beautiful drama of *Sacountala*; where, having abdicated the common intercourse of life, among the diversity of courts known to the Hindu law, one was specially provided for this ascetic community, called *aranya sabha*; from *aranya*, forest, and *sabha*, a court.—See ante, Pref., p. xiii—letter B, post, p. 313, and Append. to ch. VII, p. 267.

(5) Ch. VI, p. 109.

(6) Nareda and Smṛiti—See general note at end of the translation of Menu, pp. 364, 365.

adverting to Menu's description of the frame of the Anchoret, as, by this time, "infested by age and sorrow, the seat of malady, harassed with pains; such a mansion, in short, of the vital soul, as the occupier may (be expected to) be ready always cheerfully to quit."⁽¹⁾ In either case, whether of the *outcaste*, or the *devotee*, partition attaches only upon property possessed by him at the time, not upon what may subsequently devolve, or be acquired.⁽²⁾

2. *Among whom it takes place.*—The immediate objects of partition by the father are, his sons. They alone can enforce it, in cases in which it is exigible by law.⁽³⁾ It is at their instance, and on their account only, that it is ever conceded by him. Under the ancient law, subsidiary ones participated, but not equally, with the legally begotten; as does still the son *given* in adoption, as well as any other competent in the present age to be adopted.⁽⁴⁾ Where illegitimate issue would inherit, in case of the death of their putative father, they will have a claim to share on partition in his life; and they are, under other circumstances, entitled to be provided for, to the extent of maintenance.⁽⁵⁾ On partition also, as well as in inheritance, sons, as far as great-grandsons,

(1) Menu, ch. VI, 17.

(2) Vachespatri, Bhattacharya, 2 Dig., 525.

(3) 3 Dig., 176, 287, 290.

(4) Mit. on Inh., ch. I, sect. xii.

Daya Crama Sangraha, ch. VI, 32.

Mahabharatta, 3, Dig., 115.—Id., 140.—Ante, pp. 57, 163.

Post, Append. to ch. III, pp. 65 to 71.

[(a) And so may grandsons.—Vide Ante, p. 174, note (a.)]

share, *jure representationis*.⁽¹⁾ And, if one of the sons, absent at the time of partition in a foreign country, die leaving issue, their right survives to them so far as the seventh generation; and, on their appearing, the brothers, who remained at home, and divided, (or their representatives,) must, to that extent, answer a claim out of their several shares.⁽²⁾ The term generally mentioned, as constituting for this purpose length of absence, is twenty years;⁽³⁾ though it is said in one place that, if no intelligence be received during twelve years, concerning a man who has travelled to a foreign country, the law requires his son to perform obsequies for him, presuming his death.⁽⁴⁾ In determining what is, for this purpose, to be considered as a foreign country, various circumstances are to be attended to; such as difference of language, the intervention of a mountain or great river, and distance, as combined with one or more of the leading points; countries being accounted distant, whence intelligence is not received in ten nights.⁽⁵⁾ The right of *after-born* sons has been already mentioned.⁽⁶⁾ A *minor's* share should be secured for him.⁽⁷⁾ The result of much discussion as to the interest that the *wife* has in partition by, or in the life of the husband, is, that it is incidental;^(a) it not

(1) 3, Dig., 7, 63, 65.

Daya Crama Sangraha, ch. I, sect. i, 3.

(2) Vrihaspati, 3, Dig., 84, 440.

Jin. Vah., ch. VIII.

Post, Append. to ch. IX, pp. 327, 396.

(3) 1, Dig., 266—269.

(4) 1, Dig., 278.

(5) Vrihat Menu, and Vrihaspati, 2, Dig., 29.

(6) Ante, p. 172.

(7) Post, Append. to ch. IX, p. 362.—C.

[(a) The division of property with reference to wives is not recognized in Southern India:—*Muttuvengadachellāsamy*; *Monigar v. Tumbayāsamy Monigar*.—Dec. M. S. U., 1849, p. 27.]

being competent to her to claim it in her own right.⁽¹⁾ Being admitted to participate, she shares equally with the sons, account being taken of such separate property as she may possess, derived from, or through her husband ;⁽²⁾ and allowing her, according to some authorities, certain appropriated deductions of furniture, ornaments, and the like.⁽³⁾ Where she does not participate, she is to depend upon the reservation to be made by her husband, for himself, and the remaining members of his family ; which, with reference to property acquired by him, may be to any extent that he may deem expedient.⁽⁴⁾ The allotment of a share to her, where it takes place, does not imply separation: so far from it, that the text, declaring partition not to obtain between a wife and her lord,⁽⁵⁾ has been in modern times construed as importing a denial of their disunion, as a thing altogether incompetent.⁽⁶⁾ And accordingly, whether she takes her several share on the occasion, or a reserved portion out of the property retained, for that and other purposes, by her husband, the law supposes the conjugal intercourse to remain, after partition among sons. Her share, if assigned to her, being in the nature of alimony, and differing in point of title

(1) Apastamba, 3, Dig., 27.—Id., 422—427.

(2) Jim. Vah., ch. III, 31.—Mit. on Inh., ch. I, sect. ii, 8, 9. Id., sect. vii, 1.—Post, ch. VIII, p. 161. Yajnyawalkya, 3, Dig., 11, et seq.—Id., 19, et seq.—1, Dig., 231. Daya Crama Sangraha, ch. VI, 22—27.

(3) Apastamba, 3, Dig., 26. Mit. on Inh., ch. I, sect. ii, 10, and sect. iii, 6.

(4) 3, Dig., 30.

(5) Apastamba, 3, Dig., 27.

(6) 3, Dig., 426, 427.

from her *Stridhana*, or what is emphatically called the *peculiar property of a woman*, is resumable, if necessary, by her husband.⁽¹⁾ Where there are several wives, they share equally.⁽²⁾ *Wives of the paternal grandfather* have the same claim with the fathers.⁽³⁾ *Daughters* take nothing, as of right, during their father's life.⁽⁴⁾

3. As to the *mode of partition*, and the *assignment of shares*. It may be made openly in the presence of arbitrators; privately, by adjustment;⁽⁵⁾ and a third method of ascertaining a separate title is, by casting of lots;⁽⁶⁾ upon which it may be remarked, that the above are precisely three, out of the four, enumerated by our Littleton, as the modes of partition among sisters, (co-parceners,) at the English common law; the fourth being only a modification of the one by private agreement,—when, it having been settled that the eldest shall make it, she chooses last, according to an established rule, *Cujus est divisio, alterius est electio*. Of what antiquity in the East is partition by lot, appears from its having been the way, by which the land of Canaan

(1) 3, Dig., 22—27.—Id., 72, 427.

Jim. Vah., ch. II, § 57.

(2) Yajnyawalkya, 3, Dig., 11, 18, et seq.

Mit. on Inh., ch. I, sect. ii, 8, 9.

(3) Vyasa, 3, Dig., 12.—Id., 24.

(4) Mit. on Inh., ch. I, sect. vii, § 14.

Nareda, 3, Dig., 48 —Id., 52.

(5) Sancha and Lichita, 2, Dig., 536.

(6) 2, Dig., 505, 518.—Jim. Vah., ch. I, § 8, note.

was to be divided among the tribes, and people of Israel.⁽¹⁾ Previous however to partition, debts must be provided for, by such means as may be agreed at the time ; since, taking place in the life of the father, it must be looked upon as an anticipated descent of his property ; and, as the property of one deceased may be pursued by his creditors, into whatsoever hands it comes,⁽²⁾ it follows that the sons, among whom it is divided, must, at all events, be liable, to the extent of the shares assigned them ; under the general responsibility of the descendant for the debt of his ancestor, subject to any arrangement for payment, to which the creditors have been parties.⁽³⁾ But, for a debt incurred by a disunited father ; an after-born son is exclusively liable, unless it was contracted, not on his own account alone, but for the benefit of the family, subsequently to re-union ; in which case it is eventually a charge, as well upon the re-united parceners, as upon sons born after partition.⁽⁴⁾ Where there are outstanding debts, both of father and grandfather, with assets of each, they may be distributed ; analogous to the practice in our Court of Chancery, of marshalling the assets.⁽⁵⁾ And here it may be

(1) Numb., ch. XXVI, .v. 54, 55 ; XXXIII, 54 ; and Josh., ch. XVIII, 10. As a matter of curiosity, the following is, according to Littleton, the method in England of partition by *lot*. Partition being made, each separate part of the land is written on a little scroll, which is covered with wax in form of a ball, so that the scroll cannot be seen ; when all the balls are put into a hat, to be kept in the hands of an indifferent person ; after which, the eldest daughter draws first, and the rest according to their seniority.—*Allynatt*, p. 15.

(2) Note to 1, Dig., 266.

(3) *Jim. Vah.*, ch. I ; § 48.—*Daya Crama Sangraha*, ch. VIII, 26.

(4) *Id.*, ch. V, 18, 19.

(5) 3, Dig., 74.

observed, that the son, living with the father, is liable for a debt contracted by him for the common concern, upon the latter becoming afflicted with an incurable disease, the same as though he were dead ; making it, by consequence, reasonable that, in such case, there should be in the son a right of interference with the family property.⁽¹⁾ With respect to other charges upon the property, forming, with that of debt, the subject of a distinct chapter,⁽²⁾ it need only be remarked here, that the father can retain for them ; and that if, through degradation from caste, or otherwise, this should not be competent, they will remain to be provided for by the sons, as among brothers after the death of their father, out of the common stock.⁽³⁾

Partition being to be made, by the ancient law, whether it were by the father among his sons, or subsequently among brothers, the practice was, to begin with deductions of a twentieth to the eldest, a fortieth to the middlemost, and an eightieth to the youngest.⁽⁴⁾ Different constructions occur, as to which was to be considered as the middlemost ; one being, that it included all the intermediate ones, between the eldest and youngest ;⁽⁵⁾ another, that it meant the next after the eldest, those born subsequently being, according to this strange idea, all comprehended under the term, youngest.⁽⁶⁾ Upon the former construction, a fortieth was given

(1) Catyayana, I, Dig., 277.

Post, Append. to ch. VIII, p. 277, and to ch. IX, 326.

(2) Ante, Ch. VIII, p. 156.

(3) Ante, p. 156.

(4) Menu, ch. IX, 112.—Mit. on Inh., ch. I, sect. iii, § 3.

(5) Menu, ch. IX, 113.—2, Dig., 550.

(6) Sricrishna, note to Jim. Vah., ch. II, § 37.

to each; unless they happened to be deficient in virtue, in which case, they had only a fortieth among them.⁽¹⁾ The eldest had moreover a claim, not only to the best chattel, but, upon partition among brothers, to the best apartment of the house, the rest being distributable according to the pretensions of each.⁽²⁾ But, to entitle him to these privileges, extraordinary merit was required to be combined with primogeniture, otherwise some trifle only was to be given him, to distinguish him as eldest.⁽³⁾ The rules concerning these deductions varying, their diversity is endeavoured to be reconciled by the supposition of relative, and superior good qualities—a criterion of title admitted to depend upon reasoning, too subtle to be allowed much influence in the determination of civil rights.⁽⁴⁾ Altogether obsolete as the pretension is, upon partition among brothers, and optional in any case on the part of the father in his life-time, while he is restricted from acceding to it, where the property is hereditary,⁽⁵⁾ the law upon it has become a matter of mere curiosity.⁽⁶⁾ Disregarding, therefore, all distinctions of the above kind, the general rule is, that, as among the sons, it must be equal.⁽⁷⁾ It may, indeed, be so far partial, that (as in the instance of the prodigal son in the celebrated parable) any one

(1) 2, Dig., 559.

(2) 2, Dig., 558.

(3) Menu, ch. IX, 214, 215.—2, Dig., 551.

(4) 2, Dig., 548—557—3, Id., 182—Ante, pp. 88, 130.

(5) Byroochund Rai v. Russoomunee; Beng. Rep., ante, 1805, p. 29. Id., p. 64.—Post, Append. to ch. IX, p. 382.

Mit. on Inh., ch. I, sect. ii, § 1, c.—Id., sect. iii, 4.

2, Dig., 565, 574, 597.—Aditya Purana, 3.

See general note, at the end of the translation of Menu, p. 364.

(6) Beng. Rep., Case 6, for 1818, p. 630.

(7) Post, Append. to ch. IX, pp. 316 and 320.—C.

son may, in exclusion of the rest, be its sole object, the property of the father with regard to the rest, and they also, remaining as before ;⁽¹⁾ it being certain that such one, upon whatever ground he separates, can only receive his due share ; the rule alluded to (which is alike binding according to the doctrine of every school) being, that, as to such parts of it as have been inherited by the father, whether real or personal, land or movables, the division must be strictly equal ; while, with respect to that which is of his own acquisition, his sons co-operating, or not, it must be virtually so.⁽²⁾ For, with regard to the latter, of which the shares are more in the discretion of the father, he is not at liberty to make distinctions upon improper grounds ; as for instance, on behalf of the issue of a favourite wife, which was prohibited by the Jewish, as it is by the Hindu law ;⁽³⁾ preferences, as well as exclusions, requiring to be justified by circumstances, not being permitted to be indulged through caprice ;⁽⁴⁾—just as, among the Romans, it was not competent to the parent to disinherit his child totally ; without assigning sufficient reason for an act so contrary to nature : whereas, on the distribution of that which is ancestral, the Hindu father has no discretion at all.⁽⁵⁾ And here it may be remem-

(1) Daya Crama Sangraha, ch. VII, 13.

(2) Menu, ch. IX, 215.

Jim. Vah., ch. II, 20, 50, 76.—86, note.

Daya Crama Sangraha, ch. VI, 19, 20.

Bhowannychuru B. v. Heirs of Ramkaunt B. ; Beng. Rep., 1816, p. 562.

2, Dig., 544.—Post, Append. to ch. IX, p. 317.—D.

(3) Deut., ch. XXI, v. 16, 17.—Nareda, 2, Dig., 541.—3, Id., 2.

Daya Crama Sangraha, ch. VI, 11—15.

(4) Jim. Vah., ch. II, 74, 83, et seq.—Mit. on Inh., ch. I, sect. 14.

Catyayana, 2, Dig., 540.—3, Id., 2.

(5) Jim. Vah., ch. II, 50.

bered, that, whatever may have been acquired by him, *using the patrimony for the purpose*, is construed as forming a part of what has descended; while, of that which is properly ancestral, any portions that, having been lost during the time of the ancestor, have been since recovered by his successor, *without the use of the patrimony*, are looked upon as acquired;^(a) and such augmentations are liable to be classed and treated accordingly on a partition.⁽¹⁾ So fixed are these principles, as applicable to the different sorts of property, that, if violated, and the departure from them not acquiesced in at the time, the proceeding may be disputed; the sons' joint ownership with the father being said to consist in the power of claiming partition, (*i. e.*, as it must be understood, where it is by law claimable,) and in that of resisting an unequal one.⁽²⁾ Where a share is not desired by a son, it may be effectually waived by his acceptance of a trifle in satisfaction, upon the principle of *quisque potest renunciare juri pro se introducto*; his heirs being bound by his consent.^{(3)(b)} But, without renunciation, it may be still claimed.⁽⁴⁾ Nor is it necessary, where the partition is general, that it should attach upon the whole of the property; a part only may be distributed, keeping what remains for future division, or to descend in a course of inheritance.⁽⁵⁾ With regard to the indivisibility of par-

(1) Aute, ch. 1, p. 4.

(2) Mit. on Inh., ch. I, sect. ii, 14.—3, Dig., 43, 45, 49, 67.
Post, Append. to ch. IX, pp. 417, 419.—I.

(3) Menu, ch. IX, 207.—Mit. on Inh., ch. I, sect. ii, § 11, 12.
Yajnyawalkya, 8, Dig., 65.

(4) 3, Dig., 68.

(5) 2, Dig., 527.—Post, Append. to ch. IX, p. 392.—C.

[(a) The recovery must be, as subsequently explained, *infra*, p. 207, *bond fide*, and, according to some authorities with the privity of co-heirs,—not in fraud of their title by anticipating them in their intention of recovering it.]

(b) But he must be able to support himself, otherwise the renunciation is invalid as affecting his heirs.—Mit. on Inh., ch. I, sect. ii, § 11, 12.]

ticular things, and the divisibility of others, but in a special way, the distinctions and differences involve a detail, which, as it would be tedious to repeat, so will it be best reserved for what follows upon partition among co-heirs,⁽¹⁾ where questions of the kind are more likely to arise, than upon partition by the father, which, in the nature of the thing, can, comparatively speaking, so rarely occur; it being moreover declared, that the precepts concerning partition among brothers are to be observed as between a father and his sons, due attention being paid to circumstances, and in the absence of express texts of law.⁽²⁾

The shares of the sons being thus ordained to be, in general, equal, the father has a right to two for himself out of the ancestral property,^(a) the law, as to what he may otherwise have acquired, having left him free to part with as much, or as little of it in his life, as he pleases; retaining for himself, and the rest of his family, not receiving shares, whatever he may think proper;⁽³⁾ with liberty, in case of indigence, to resume, what he may have so divided;⁽⁴⁾ as the Roman law (observes a learned writer)⁽⁵⁾ indulged to every one who laid himself under a gratuitous obligation, the benefit of a competence, (*beneficium competentie*;) by which he might retain for himself

(1) Post, p. 201.

(2) 2, Dig., 125.

(3) Jim. Vah., ch. II, § 35, and note.—Id., 47, 55, 75, et seq.
Post, Append. to ch. IX, p. 324.—S.
Nareda, 3, Dig., p. 43.

Vrihasp., Id., p. 44.
Sancha and Lichita, 2, Dig., 555.

(4) Nareda, 2, Dig., 536.

(5) Colebrooke on Obligations, p. 248.

[(a) According to Mit. on Inh., ch. I, sect. v, § 2, a father has no right to a "double share."]

so much as would be necessary for his subsistence, if, previous to the fulfilment of the obligation, he happened to be reduced to want.

Jagannatha, citing the Pracasa's exposition of a text of Menu, says, "Should any one of undivided brothers, through laziness or knavery, make no exertion for gain, not striving to improve the existing stock, and acquire farther wealth, by agriculture, or the like, he may be debarred from his share of that which has been added by the rest of the brethren; subject to a trifle being given him for his maintenance; and without prejudice to his claim for a share of the original stock;"—a reasonable provision surely as against a *drone*! But the Southern Pundits deny this; they insist, that to the right of sharing there is no such exception; but that all participate equally, including such as may have done nothing toward improving the common stock; not admitting the power of driving

Ignavum fucos pecus a præsepibus—

And, for this, referring to the Mitacshara, they think the text of Menu (already cited) to be declaratory of the only case, in which a parcener may be excluded from his share, namely, with his consent.⁽¹⁾

It remains to treat of partition among co-heirs;—previous to which, it will be consonant to advert to the state of a Hindu family, on the descent of the paternal property, and while it remains undivided.

(1) Mit. on Inh., ch. I, sect. iv, 31.—Menu, ch. IX, 207.
Post, p. 210.

Wherever a plurality of sons exists, the inheritance descends to them, as *Co-parceners*, making together but one heir; like the descent with us, by the common law, to females, or by particular custom, as *gavelkind*, to all the males in equal degree. To this descendibility of estates, by the Hindu law, to all the sons in common, there appears to have been ever, in point of fact, an exception in the case of the crown; as it is with us, at this day, in the same case, where there are only females to inherit. The exception, arising from the nature of the thing, is noticed by Menu, who speaks of a dying king "having duly committed his kingdom to his son;"⁽¹⁾ a course, which Jagannatha refers to usage rather than to law.⁽²⁾ Upon the same principle of usage, stands, with respect to many of the great Zemindaries of Bengal, and other parts of India, at this day, the exclusive succession of the eldest son,⁽³⁾ or of a *Jobrai* (Yava-Raja, *juvenis rex*),—a young prince, associated to the empire, as coadjutor to the king, and his designated representative.⁽⁴⁾ With these exceptions, the rule of co-parcenary prevails; in investigating which, it is necessary to observe, that the deceased may have left, not only more sons than one, but brothers, as well as a widow or widows, and daughters, together with other dependents; and such sons and brothers may

(1) Menu, ch. IX, 323.

Post, Append. to ch. IX, p. 328.

(2) 2, Dig., 121, 122. See also Id., pp. 118, 188, and 3, Id., 97.

(3) Beemlah Dibeh v. Goculneth; Beng. Rep., ante, 1805, p. 32.

Koonwur Bodh Sing v. Seonath Singh; Id., 1813, p. 415.

Post, pp. 193, 226, and Append. to ch. XI, p. 447.

[Mootovengadachellasawmy Mon. v. Coombayasawmy Mudali, Madras Sud. Court Dec., 1849, p. 27.]

(4) Ramgunga Deo v. Doorgamunes Jobrai; Beng. Rep., 1809, p. 100.

Urjun Manie Thakoor v. Ramgunga Deo; Id., 1814, p. 469.

Post, Append. to ch. IV, p. 167.

have their wives and children respectively; the whole having constituted, in his lifetime, (not so many co-parceners indeed, in the proper sense of the term, but) an *undivided family*. Or, supposing him to have been a single man, with collateral relations only, their descendants and connexions all living together in co-parcenary, his death makes no difference in this respect among the survivors. If undivided while he lived, till a division takes place among them, they still continue so, in point of law, howsoever appearances may indicate a different state.

In the property thus descended, so long as they remain undivided, the family possesses a community of interest;⁽¹⁾ though, in order to avoid confusion, reason and law alike suggest the expediency of adopting some one member of it to manage its concerns. To this confidence, the claim is with the eldest, but it is subject to character, and the general sense of the co-parceners, without a concurrence of which no express or implied pretension of the kind can have any validity.⁽²⁾ This management regards the dealings and transactions that are carried on under it, professedly on behalf of the family;⁽³⁾ the obligatory force of which becomes of importance, alike to the members in general, and to creditors. In this capacity, as manager, all

(1) *Prima societas in ipso conjugio est; proxima in liberis; deinde, una domus; communia omnia.* 1, Cic. *Offic. lib.* i, 17. Oxford edit., 4to.

(2) *Jim. Vah.*, ch. I, 36, 37.—2, *Dig.*, 533.—*Ante*, p. 174. *Post*, *Append. to ch. VI*, p. 252.—*And Infra*, p. 255.

(3) *Jim. Vah.*, ch. III, sect. i, 15.—*Vyasa*, 2, *Dig.*, 189. *Prannath Das v. Calishunker & Co.*; *Beng. Rep.*, ante, 1805, p. 49.

his acts and disbursements, to be of validity, must be for the general good, if not for the immediate and indispensable maintenance of the whole ;—for objects, chargeable upon the common stock, including works of piety, which it concerns all should not go unperformed ;⁽¹⁾ with this difference, that where his acts have been for the support of the family, the charge is *in its nature* binding upon the joint property, though the remedy may eventually be against him only by whom it was incurred, so acting ;⁽²⁾ whereas, if in the course of trade, or for charitable purposes, in order to its being so, it must have had *the consent* of the rest, express or implied.⁽³⁾ Accordingly, it imports creditors to take notice, whether the family, with which they are about to deal or contract, be divided, or undivided ; and, if the latter, at their peril, to see that the transaction be one, by which the rest of the co-heirs will be concluded ; since, otherwise, he only, with whom it has been entered into, will be answerable for it, and not the common stock. Such seems to be the result of the decisions referred to below :⁽⁴⁾ of which those at Bengal rest upon the highest living authority in Hindu law,—that of Mr. Colebrooke ; who, upon his point, and with reference to a case at Madras, upon which he was consulted, held, “ that the consent of the sharers, express “ or implied, is indispensable to a valid alienation of “ joint property, beyond the share of the actual alienor ”

(1) Mit. on Inh., ch. I, sect. i, 28, 29.—Post, Append. to ch. IX, p. 339.

(2) Bengal Rep., Clause 12, for 1817, p. 607.
Post, Append. to ch. IX, pp. 336—338.

(3) Post, Append. to ch. IX, p. 342.

(4) Prannath Dass v. Calishunker Ghoozal ; Beng. Rep., ante, 1805, p. 51.
Shera Dass v. Bishonath Dobeé ; Id., p. 46.

—observing, in the course of his opinion, “that the
 “only doubt which the subtlety of Hindu reasoning
 “might raise, would be, whether it be maintainable
 “even for his own, the property being undivided.”⁽¹⁾
 Such may be the construction of a passage in the *Mit-*
tacshara, on the ground of co-ordinate property.⁽²⁾ But
 where each parcener is considered to have vested in
 him, during the co-partnership, a several, though un-
 ascertained right, as is the case where the authority of
Jimuta Vahana prevails,⁽³⁾ it is clear that there may
 be an assignment before partition; the alienee becom-
 ing a sort of tenant in common with the other parce-
 ners, admissible, as such, to his distributive share, upon
 a partition taking place;⁽⁴⁾ and, even with respect to
 an alienation of the whole, it would be good for the
 alienor’s share; though, for his attempt to dispose of
 more, unwarranted, he would be liable to penal con-
 sequences.⁽⁵⁾ The eminent person alluded to, was care-
 ful at the same time to admit the force of circumstan-
 ces, under which, consent in these cases may be pre-
 sumed; especially when the management of the pro-
 perty supposes a power of disposal; and, generally,
 when the acts, or even silence of the other sharers,
 may have given him a credit, and the alienee had no

(1) Notes of Cases at Madras, vol. ii, p. 79, Ed., 1827.

Post, Append. to ch. IX, pp. 343, 348.

(2) *Mit. on Inh.*, ch. I, sect. i, 30.—2, Dig., 519.

(3) *Sricrishna*, note to *Jim. Vah.*, ch. II, 23.

2, Dig., 104.

Daya Crama Sangraha, ch. XI, 2, 3, 7.

(4) 2, Dig., 104.

(5) 2, Dig., 105.

Post, Append. to ch. IX, p. 350.—E.

Anunchund Rai v. Kishen Mohun Bunoja; *Beng. Rep.*, 1805, p. 32.

Rajbuluh Bhooyan v. Mt. Buneta De; *Id.*, ante, 1805, p. 48.

notice.⁽¹⁾ It is so obvious that, in a multitude of cases here contemplated, fraud and collusion, on the part of the co-heirs, would be imputable; and, wherever this is manifest, the consequence is so likewise; once ascertained, it never is to succeed.⁽²⁾ But, wherever they appear to have been unconscious of a transaction militating against their interests, the policy of the law would be, to exact of the persons so dealing with the manager, or other member of the family thus abusing his power, the most extreme caution;⁽³⁾ for, though the want of notice may be always pleaded on the part of the alienee, yet it is to be so pleaded as a circumstance only, and not in bar; nor, even as a circumstance, is it to be attended to but with much reserve; open, as it must always be, to argument, and leading to endless uncertainty, as well as to perjury;—so much better is it, that the rights of subjects should depend upon certain and fixed principles of law, rather than upon constructive inferences, by which justice is but too often misled, and loose and pernicious practices encouraged, to the subversion of property! in favor of a *bonâ fide* alienee of undivided property, where the sale or mortgage could not be sustained as against the family, such amends as it could afford would be due, out of the share of him, with whom he had dealt; and, for this purpose, a Court would be warranted in enforcing a partition.⁽⁴⁾ The necessity

(1) Post, Append. to ch. IX, p. 344.

(2) Menu, ch. VIII, 165.

(3) Post, Append. to ch. IX, p. 348.—C.

(4) Post, Append. to ch. IX, p. 349.—C.

And Append. to ch. XI, 433.

of inquiry, on the part of persons dealing with a family that may be undivided, will be naturally greater, where *minors* happen to be concerned; who, in general, will not be bound but by necessary acts, or such as are evidently for their benefit; the jealousy, in their favor, of the Hindu, corresponding with that of the English law.

II. Having thus adverted to the condition of the family undivided, partition among co-heirs comes next to be considered; in investigating which, the following points are material: viz., 1. The right. 2. The property to be divided. 3. How the division takes place. 4. The proof, where it is disputed. To which will be added, 5. Matters subsequent; and, 6. General observations concerning.

1. As to the *right*, it is far from commensurate with the interest existing in the property; numbers being eventually concerned, who cannot demand a division. Thus, the females of the family have a right to be maintained, and provided for out of it, as will have been seen in the last chapter. But, since a wife cannot claim partition as against her husband, nor a daughter a share upon its taking place in the life of the father,⁽¹⁾ so neither can the one, or the other, generally, call for it after his death. This can be done by those alone, who are considered as *heirs*; in contradistinction to those, who have a claim only to be *maintained*,—of which latter description are the widow

(1) Ante, pp. 178, 180.

or widows of the deceased, leaving at his death male issue ;—the principle being, that the right is co-ordinate with the gift of funeral cakes.⁽¹⁾ It may take place with reference to one only, leaving the rest as they were before, undivided ; or, it may be general, all consenting.^(a) According to Menu, it has been thought to be prohibited during the life of the mother ; his words being, that, “ after the death of the father and “ mother, the brothers may divide the paternal and “ maternal estate.”⁽²⁾ But the author of the *Smṛiti Chandrica* has explained the meaning to be, that the death of the one, and of the other, has reference distributively to their respective property ; so that the partition of the father’s may be made, living the mother, and that of the mother’s while the father is yet in existence ; there being no reason to wait the demise of both, in order to divide what has belonged to either ; neither having ownership in the other’s property, where there are children. Jimuta Vahana, indeed, denies the lawfulness of distribution, while the mother survives,⁽³⁾ but his opinion is construed by his commentator Sricrishna, and others, as importing only that such partition is wrong, not that it is null.⁽⁴⁾ And the result of a careful examination by Mr. Colebrooke, of every material passage applicable to the point, was, that a division, living the mother, is competent throughout every province, that of

(1) Devala, 8, Dig., 10.

(2) Menu, ch. IX, 104.—*Daya Crama Sangraha*, ch. VIII, 1.

(3) Jim. Vah., ch. III, sect. i, 13.—3, Dig., 78.

(4) Note to Jim. Vah., ch. III, sect. i, 1.

[(a) Under the Maroomakatayam law, the consent of all the members are necessary, even though only one of them wish to separate.—Dec. M. S. U., 1867, p. 120.]

Bengal excepted ; where the prohibition, after all, is considered, by the best authorities, to be merely ethical ; so that a division in breach of it is not even there invalid.⁽¹⁾ But, where the deceased has left *several* widows, with sons, more or fewer, by each : in such case, if the number by each be *equal*, in order to avoid the trouble of a more detailed distribution, the allotment may be to the mothers, leaving it to them to sub-divide among the sons, instead of dividing to the sons in the first instance ; a mode of division called *Patni-bhaga*, or division by wives,^(a) in contradistinction to *Puttra-bhaga*, or the division by sons.⁽²⁾ In this there appears nothing unreasonable ; but the principle of this mode being, that the division to the wives is always to be an equal one, its effect becomes very different, where the number of sons by each *varies*. As, if one wife has one son, another three, and a third six, and each wife takes a third of the property, it is evident that the shares of the sons, all by the same father, will be very different. So unnatural a mode of division, therefore, is allowed only among Sudras ; nor, among them, but where there is a *custom* for it, which must of course be strictly proved ;⁽³⁾ though it is said to prevail in the southern territories of India, as much as did formerly the custom of *gavelkind* in Kent ; thus, to a certain extent, but still in the Sudra class only, superceding

(1) MSS. penes me.—And see Post, Append. to ch. VI, p. 252

(2) 2, Dig., 572, 575.—3, Id., 110.

(3) Sumrun Singh v. Khedun Singh ; Beng. Rep., 1814, p. 443
where the custom in question is called *Koolachar*.

[(a) This mode of division, the *Patni-bhaga*, is not recognized in Southern India,—Dec. M. S. U., 1849, p. 27.]

the law of the *Sastras* ; and, to this opinion, the frequency with which references of the kind appear to have been made, in the Courts of the Company in the Peninsula, seems to give countenance.⁽¹⁾ The same text of Menū, last cited, is also referred to, as inconsistent with the right of a single co-heir to call for partition, since it speaks of “ the *brothers* being assembled for the purpose ; ”—but the construction has been different, and the right is distinctly affirmed by Jimuta Vahana.⁽²⁾ It seems equally clear, that it may be enforced for the benefit of a *minor*, as where his coparceners are committing waste.^(a) In such a case, his guardian, or, in default of one, any relation not interested, would be competent to institute a suit for the purpose ;⁽³⁾ by which his share, being separated, must be secured for him till he come of age ; otherwise, as against him, a partition would be void.⁽⁴⁾ Upon the same footing, in this respect, with minors, are *absentees*, residing in a foreign country ;⁽⁵⁾ whose consent, at the time, not being attainable, partition may proceed without it, the law enjoining the preservation of their respective shares, till the one arrive at majority, and the other returns ; and this, in the case of the latter, to the extent of the *seventh* in descent, the right of parceners, remaining at home, being lost by dispossession beyond

(1) Post, Append. to ch. IX, pp. 351 to 357.

And Append. to ch. IV, p. 167.

(2) Jim. Vah., ch. III, sect. i, § 16.

Post, Append. to ch. IX, p. 359.—C.

(3) Id., Append. to ch. IX, pp. 360, 361.

(4) Id., Append. to ch. IX, p. 361.

(5) Antc, p. 178.

[(a) Dec. M.S.U., 1859, pp. 7, 263, and Madras High Court Reports, 1862-63, p. 105.]

the *fourth*.⁽¹⁾ Admitting the consent of the mother, where living, not to be universally necessary, in those parts of India where it may be dispensed with, if a widow of a deceased co-heir happen to be pregnant at the time of his death, or be supposed to be so, either partition should wait, or a share should be set aside, to abide the contingency of her having an after-born son; failing which, it reverts, and is distributable, subject to the maintenance of the widow. Or, should such a birth take place subsequent, though not apprehended at the time, so as to have suggested the reservation of a share, an allotment must be made, by contribution among the parceners who have divided, making due allowances; as in case of partition in the life of the father. *Grandsons*, claiming by representation, distribution in their case must be settled through their deceased fathers; the aggregate sons of each being entitled *per stirpem*, not to an equality individually with their uncles and cousins.⁽²⁾ And, as on partition by a father, so among co-heirs, any one, not wanting his share, may waive it by acceptance of a trifle, such acceptance operating as an *estoppel* against his claim ever after.⁽³⁾

2. *As to the property to be divided.*—Upon partition in the life of the father, there is, as has appeared, a

(1) Jim. Vah., ch. VIII.

Vrihaspati, 3, Dig., 440.—Id., 448.—Id., 10.

Daya Crama Sangraha, ch. X.

Ante, p. 178, and Post, Append. to ch. IX, pp. 327, 396.

(2) Mit. on Inh., ch. I, sect. v, 2.

Catayana, 2.—3, Dig., 7.—Id., 82.

(3) Menu, ch. IX, 207.—Ante, p. 185.

material difference between the ancestral property that has descended, and what has been since acquired; the distribution of the latter being subject, in some degree, to the will and discretion of the father;⁽¹⁾ but no such distinction exists upon partition among co-heirs, whose right attaches alike on both kinds, and among whom the division of everything must be equal. Things destined to religious uses, indeed, remain in common; except that the *idols* of the family are, by some texts, assigned to the eldest son, deductions in favor of whom are, by the modern law, in general, obsolete.⁽²⁾ Such is the general rule, founded on the supposition of the property not inherited having been acquired by the joint labor of all, or under circumstances rendering it common. But this not being always the case, and other considerations intervening to modify the right, this part of the subject will be best discussed, by considering, *a* What things are *impartible* with the reason rendering them so: *β*. Such as are *partible* indeed, but in a *special manner*.

a As to things vesting in an individual of a family, in exclusion of the other members, and consequently impartible, the instance of *Regalities*, and of *Zemindaries*, (standing upon the same ground) has been already noticed;⁽³⁾ of which it has been thought, however, that

(1) Ante, p. 184.

(2) Jim. Vah., ch. III, sect. ii, 27.

Mit. on Inh., ch. I, sect. ii, 1, 6.—Id., sect. iii, 4.

Neelkaunt Raj v. Muneo Chowdraen; Beng. Rep., ante, 1805, p. 63.

Post, Append. to ch. IX, p. 382.

See a contest for an object of this nature, in Bombay R., p. 181, where the revenue of the Idol was computed at Rupees 100,000 per annum.

(3) Ante, p. 188.—Post, Append. to ch. IX, p. 328.

it is the *ruling power* only that is not subject to division; while the effects and private estate of a sovereign, like those of any ordinary individual, are in common, and distributable among all his sons.⁽¹⁾ These seem to be the only instances of the kind; the exception arising from the nature of the thing, sanctioned by custom. It may be convenient, however, to advert here to some other subjects, upon which doubts have been entertained, upon no solid foundation. Such, upon a supposed analogy to a *corody*, as well as on the ground that partition of them among a number, for whose maintenance they cannot adequately provide, would defeat their object, are the *Mara Vurtanah*, *Bazaar Vurtanah*, and other dues accruing to the *conicopoly* of a village; which, though agreed to be heritable, have been denied to be divisible.⁽²⁾ But a *corody*, being, the grant of an annuity assigned upon some particular fund,⁽³⁾ if made to one of an undivided family and his heirs, with nothing in it to control the operation of the law, would, upon the death of the grantee, leaving sons, descend in common, and be divisible among them on partition.⁽⁴⁾ It is the same with a village granted in *Srotryum*^{(5)(a)}—a favorable tenure, conferred occasionally by Government, in consideration of the individual merits of the grantee. Supposing the grant to be exclusive, it would

(1) Post, Append. to ch. IX, p. 329.—E.²

(2) Id., Append. to ch. IX, p. 363.—E.

(3) 2, Dig., 163.

(4) Catyayana, 3, Dig., 375.

(5) Post, Append. to ch. IX., p. 365.—E.

[(a) And so with land specially granted to maintain the rank and dignity of a family, but the annual produce is divisible.—Dec. M. S. U., 1851, p. 96, and Zemindaries descend to the eldest son.]

not be partible among collaterals;⁽¹⁾ and consequently, upon the death of the *Srotryumdar*, leaving sons, their uncles not sharing in the inheritance, it would descend (not to the eldest merely, but) to all the sons in common. And, as to this leading to endless divisibility, the objection, being inherent, cannot be helped, unless obviated by the terms of the grant, importing a particular limitation; since, otherwise, the law must prevail. Nor is the case of the *conicopoly* distinguishable from that of the various offices attached to the pagodas, and other religious establishments of the natives, the rights of Brahmins attendant upon funerals, and the like; which, however, some of them may be disposable by regulating the periods of their enjoyment, as they are in general hereditary, so are they likewise common and divisible;⁽²⁾ as are also assignments to individuals of the Government share of the produce of a portion of land, called *Jaghires*.⁽³⁾ But lands endowed for religious purposes are not inheritable, and consequently not divisible, though the management of them may be so.⁽⁴⁾ Impartibility results also from *appropriation*; upon which ground, as well as to obviate the inference from their having been obtained at the expense of the joint estate, it has been thought expedient (it seems) expressly to declare, that *wives* continue to belong to their respective husbands, upon, and after

(1) *Purtaub Bahauder Sing v. Tilukdhase Sing*; Beng. Rep., 1805, p. 101.

(2) 3, Dig, 375.—*Post*, Append. to ch. IX, p. 368.
Mt. Rajoo v. Mt. Buddun; Beng. Rep., 1812, p. 327.
Kalachund Chuckurbutee v. J. Chuckurbutee; Id., 1809, p. 211.

(3) *Post*, Append. to ch. IX, p. 329.—E.

(4) *Elder widow of Raja Chutter Sein v. Younger do. of do.*, Id., 1807, p. 103.

Ante, p. 140.

partition. Such is the explanation given of "women," in these several texts enumerating things that are exempt. They are said to respect the wives of the co-heirs, the female slaves of the family being clearly partible.⁽¹⁾ Upon this ground rests the exemption of the clothes and jewels of the different members of the family, whether male or female;⁽²⁾ but it is confined to such as have been usually worn; habitual wear (says Jagannatha) being considered as a mode of acquisition.⁽³⁾ So, by the English law, under similar circumstances, it is matter of reference, in the Court of Chancery, to the Master, to enquire what jewels or other things, a lady is entitled to, for her *paraphernalia*; and that the same be retained by, or delivered to her. But, by the Hindu law, clothes of value, as court-dresses and the like, worn only on particular occasions, in which all are interested, remain, on partition, as before, for common use, unless sold; in which case, the proceeds are distributable.⁽⁴⁾ And, even of common apparel, if one happen to have much more than the rest, the difference must be adjusted, excessive disparity being in all things forbiddep.⁽⁵⁾ The same principle of appropriation extends to *slave girls*; with respect to which, where there are in a family several, of whom any of the members have been in the habit of employing one in particular to rub his limbs, or for whatever other purpose, his property in her may be

(1) Jim. Vah., ch. VI, sect. ii, 23, 24.—3, Dig., 382.

(2) Menu, ch. IX, 219.—3, Dig., 372.

Jim. Vah., ch. VI, sect. ii, 14.

Mit. on Inh., ch. I, sect. iv, 17, 19.

(3) Daya Crāma Saṅgraha, ch. IV, sect. ii, 18.

(4) 3, Dig., 376, et seq.—Id., 381, et seq.

(5) 3, Dig., 373.—Post, Append. to ch. IX, p. 370.

confirmed, when they come to divide; without regard to any accidental difference between her and the others, as to age, strength, or other qualities; provided that, upon the whole, the partition be equal.⁽¹⁾ If there be but one, it can only be done by *compensation*.⁽²⁾ And, where there being but one, there have existed no such appropriation, she may be distributed by computation of time and work (*alternis vicibus*), like anything else physically indivisible,⁽³⁾ and which, therefore, where many are concerned, can only be enjoyed by turns, or in common, subject to specific distribution by means of sale.^{(4)(a)} With respect to women of the kind alluded to, that have belonged specially to the father, or other ancestor, they are not to be distributed, but maintained, as long as they continue to conduct themselves irreproachably.⁽⁵⁾ And, as to other things that were his, in a peculiar sense, such as clothes and ornaments, his bed, with its furniture, as well as his conveyance and the like, “after perfuming them with fragrant drugs, and wreaths of flowers,” they are directed to be given to the person partaking of food at his obsequies.⁽⁶⁾ Any other particular article, as a horse, or carriage, may be exempt on the same ground; and, analogous to what will be stated hereafter, with respect to acquisitions by

(1) Menu, ch. IX, 219.—Gautama, 3, Dig., 380.—Id., 374.

Jim. Vah., ch. VI, sect. ii, § 24.

Mit. on Inh., ch. I, sect. iv, § 22.

(2) 3, Dig., 384.

(3) 2, Dig., 505.—Vrihaspati, 3, Id., 379.

(4) Jim. Vah., ch. I, 10.—3, Dig., 373, 379, et seq.

(5) Mit. on Inh., ch. I, sect. iv, § 17, 22.—Id., ch. II, sect. i, § 7, 28.

(6) Mit. on Inh., ch. I, sect. iv, § 17, 18, 22.

[(a) This portion of the law has become obsolete in consequence of the abolition of slavery.]

science,—books, tools, and implements of art belong generally to those who can best employ them, the rest taking to other parts of the property, unless where the whole consists of nothing else; in which case there must be a general distribution, or a sale, and equal division of the proceeds. But the most general ground of impartibility is *separate acquisition*.⁽¹⁾ The common stock (as has been repeatedly observed) may consist either of ancestral, or of acquired property, or of both; and, having been augmented or improved, the benefit, on partition, as well as during the period of joint occupancy, accrues to all alike, without regard to the degree, in which each may have contributed to its enhancement. It is like *accretion*, under the Civil law. The property is substantially the same that it was, though rendered more valuable by cultivation and care.⁽²⁾ But a member of an undivided family, continuing such, and enjoying, in common with his co-heirs, every advantage incident to their unseparated state, may, in the meantime, acquire separate property to his own particular use; in which, upon a division, they will have no right to share. But the acquisition, in order to be so, must have been an original and independent one; the essence of the exclusive title consisting in its having been made by the sole agency of the individual, without employing for the purpose what belongs in common to the family.⁽³⁾ If the family property have been instrumental to it, it

(1) Post, Append. to ch. IX, p. 371.

(2) Mit. on Inh., ch. I, sect. iv, 30, 31.—Dig., 387.

Purtaub Bahauder S. v. Tilukdbasee S.; Beng. Rep., 1807, p. 101.

Sheopershaud S. v. Kulunder S.; Beng. Rep., ante, 1805, p. 82.

[(a) *Calutty Pillay v. Yella Pillay and another*—I; Mad. Sudder Court Dec., p. 148.]

vests in the family.⁽¹⁾ Whether it have been so, to the effect of rendering joint that acquisition which was, in fact, the product of an individual, may be sometimes a question of nicety, suited to the subtle disquisition of Hindu lawyers. Assuming as a Hindu principle, that *de minimis non curat lex*, (it being said, on another occasion, that “things of ordinary value may be given “up for they are mere chaff,”)⁽²⁾ in the instances ad-duced, of a co-parcener, in the practice of separate agriculture, taking a rope for his plough out of the common stock, or of one begging alms, in a pair of shoes that had belonged to it,⁽³⁾ it might be disputed, whether such contributions could invalidate his pre-tensions to an exclusive right in property so acquired.^(a) The question, in these cases, must be one of discre-tion.⁽⁴⁾ It seems agreed, that maintenance in the family, during the period of the separate acquisition, though it contribute to the end, is not alone sufficient to affect it with a joint character, the expenditure for the purpose being incidental.⁽⁵⁾ As well (says an author) might it be said that it should be com-mon, inasmuch as the acquirer “sucked his mother’s “milk.”⁽⁶⁾ So, though there should have been ever so considerable a disbursement from the fami-ly property, on his initiation, or marriage, neither

(1) Menu, ch. IX, 208.

Jim. Vah., ch. VI, sect. i, § 5, 10, 21, 24.

(2) 3, Dig., 381.

(3) 3, Dig., 358.

(4) Post, Append. to ch. IX, p. 372.—E.

(5) Jim. Vah., ch. VI, sect. i, § 47.—Post, Append. to ch. IX, p. 374.

(6) Visverupa, Jim. Vah., ch. VI, 1, § 48.

[(a) Another curious instance of this is noted at page 4, where property is regarded ancestral if acquired by any art or science inculcated by one’s parent.]

will this subject his individual gains to be participated ;⁽¹⁾ because everything of the kind is collateral to them, and not with the view in question ; whereas, to take the case out of the rule, where there has been no conjoint labor, the common fund must have been directly instrumental.⁽²⁾ The rule applies to all the various modes by which property is acquirable, as agriculture, merchandize, service, science, and military achievement ; with gifts, or presents ; as also to whatever may have been recovered, by an unseparated member, of family property, which, in the time of the ancestor, had been lost.^{(3)(a)} But, with regard to a gift, in order to its vesting separately, it must have been pure in its motive, and personal in its object ; for, if it were in return for something previously given, it would be liable to be considered as common property, common property having been used in obtaining it.⁽⁴⁾ Not that wherever there have been mutual gifts, the gift to the co-parcener is necessarily partible. It depends upon whether the one have been in consideration of the other, a present made, with a view to a return.⁽⁵⁾ A gift under such circumstances loses the nature of one ; *do ut des*, it is too like a contract, the result of which is common. *Nuptial gifts*, which a man receives with

(1) Jim. Vah., ch. VI, sect. i, § 49..

(2) Jim. Vah., ch. VI, sect. i, § 16, 46, et seq.—3, Dig.; 552.

(3) Jim. Vah., ch. VI, 1, 36.—Mit. on Inh., ch. I, iv, 6.

(4) Menu, ch. IX, 206.—Jim. Vah., ch. VI, i, 7, et seq.
Yajnyawalkya, 3, Dig., 343.—Mit. on Inh., ch. I, iv, 1.
Nareda and Vyasa, 3, Dig., 344.

(5) 3, Dig., 363, et. seq.

[a) Vide note (a), ante, p. 185.]

his wife, are particularly noticed as exclusively his ;⁽¹⁾ —which is the more remarkable, as the funds of the family must bear the expenses of the marriage ; but, as already intimated, this does not render them partible, the expenditure being incidental only. So, as to what is received at a marriage, in the form termed *Asura*, at which presents are made by the bridegroom to the father, or kinsmen of the bride.⁽²⁾ It must be exclusive also to the donee ; for, if it be made on the ground of his being the son of a particular person named, all the other sons (if any) participating in the consideration, the effect of common relationship prevails ; and it is the same as though it had been expressed as for all, in which case there could arise no question as to the effect.⁽³⁾ It is of no importance who the giver is, and therefore, upon principle, a gift by a stranger through commiseration should be the donee's ; yet such a gift ensures to the benefit of the family of which he is a member, though not referable to the joint funds ; and *treasure found* is another exception ; both *alms* and it being, at all events, partible.⁽⁴⁾ The instance of presents is of this importance, that it is the most usual mode in which acquisitions are made, without expenditure ;⁽⁵⁾ particularly among the Brahmins, with whom they are one of the seven recognized means of acquiring property, though not a commendable mode, even when received from

(1) Menu, ch. IX, 206.—Jim. Vah., ch. VI, sect. i, § 9, 33.

3, Dig., 363.—Daya Crama Sangraha, ch. IV, sect. ii.

(2) Mit. on Inh., ch. I, sect. iv, § 6.

Menu, ch. III, 25.—Ante, p. 30.

(3) Sriarishna, note to Jim. Vah., ch. VI, sect. i, § 51.—3, Dig., 401.

(4) Sriarishna, note to Jim. Vah., ch. VI, sect. i, § 37.

(5) Jim. Vah., ch. VI, sect. i, § 8.—Menu, ch. X, 115.

respectable persons ; while acceptance of them from low ones is so much the contrary, that it requires to be expiated by abandonment, and rigorous devotion.⁽¹⁾ And, though the benefit of them belongs, in point of law, to the individual,—in practice, partition of gifts is said to be not uncommon, particularly among the liberal ; founded, it may be, sometimes, on the mistake of supposing an acquisition to be subject to partition, simply because it was obtained by an unseparated co-parcener, according to an ancient opinion, that has been refuted.⁽²⁾ Next, as to *property recovered* ; at whatsoever time lost, and referable to whatsoever title, so it be family property,⁽³⁾ being redeemed, without use of the common stock, it belongs exclusively to the recoverer, notwithstanding the former right.⁽⁴⁾ The recovery, however, according to some authorities,⁽⁵⁾ must have been with the privity of the co-heirs, unless there appear to have been an abandonment by them, of which silent neglect on their part may be evidence.⁽⁶⁾ It must at least have been *bonâ fide*, that is, not in fraud of their title, by anticipating them in their intention of recovering it. Still less would it be available to exclude partition, if pursued in face of an express injunction on their part.⁽⁷⁾ It is laid down by Jimuta

(1) Menu, ch. XI, 24, 42, 70, 254.

(2) 3, Dig., 401.—Jim. Vah., ch. VI, sect. i, § 53.—Id., sect. ii, § 13, note.

(3) Sricrishna, note to Jim. Vah., ch. VI, sect. i, § 33.—Id., ii, 37.

(4) Menu, ch. IX, 209.—Yajnyawalkya, 2.—3, Dig., 343.

Mit. on Inh., ch. I, sect. iv, § i.

Jim. Vah., ch. VI, sect. i, § 40.

Daya Crama Sangraha, ch. IV, sect. ii, 11.

(5) Mit. on Inh., ch. I, sect. iv, § 2.

Chandeswara, Contra.—3, Dig., 364, 365.

Post, Append. to ch. IX, p. 377.

(6) 1, Dig., 214.

(7) 3, Dig., 367.—Daya Crama Sangraha, ch. IV, sect. ii, 8, 9.

Vahana, and in the Mitacshara, on the authority of Sancha, that land is not included in this rule; a position not admitted by Jagannatha.⁽¹⁾ Where, from circumstances the recovery is available to the family, the recoverer, on partition, takes a fourth, and the residue only is divisible.⁽²⁾ As to gains by *science*, the rule applicable to these embraces a variety of particulars, the root (*vid*) from which the Sanscrit word (*vidya*, science) is derived, signifying any knowledge, or skill.⁽³⁾ “In fact, (says Jagannatha,) in all cases whatsoever, “wherein superior skill is required, the wealth gained “is technically denominated the acquisition of science.”⁽⁴⁾ Hence, beside what may be gained by it in its more direct and appropriate sense, it includes what is received by a teacher from his pupil, or by a priest from those for whom he has officiated; a fee for an opinion in law, or upon any other subject on which the receiver may have been professionally consulted; a literary prize, or a reward for reading in a superior manner; not to mention what is won at play.⁽⁵⁾ It extends also to the liberal and elegant arts, among which working in metals, long practised in the East, is enumerated, with music and painting. Thus, having taken gold, for instance, and made it into

(1) Sancha, 3, Dig., 375.—Yajnyawalkya, Id., 343.

Jim. Vah., ch. VI, sect. ii, § 38, 39.—Mit on Inh., ch. I, sect. iv, § 3.

3, Dig., 357.

See also Beng. Rep., ante, 1805, p. 36; which seems to have been a case of land.

(2) Mit. on Inh., ch. I, sect. iv, .

Post, Append. to ch. IX, p. 179.—C.

(3) Jim. Vah., ch. VI, sect. ii, § 17.

(4) 3, Dig., 339.

(5) Jim. Vah., ch. VI, sect. ii, § 1 to 13.—Catyayana, 3, Dig., 333.
Daya Crama Sangraha, ch. IV; sect. i, 13, et seq.
2, Dig., 65, 179.

bracelets, the ornament, so far as respects the material, is common and partible; while the value superadded by the skill of the artist, regarded as an acquisition made through science, is subject to the rule applicable to that particular subject.⁽¹⁾ With respect to gains by *valour*, falling under the same consideration,⁽²⁾—by these, technically understood, is not meant military pay, which, as to its partibility, is not distinguishable from any other ordinary acquisition;⁽³⁾ but such, where extraordinary prowess has been displayed; being resolved by Menu,⁽⁴⁾ and others, into the reward of a gallant action in the field, or into spoil taken under a standard, after a route of the enemy; of which latter it is remarkable, that, as with us, it does not vest without the assent of the king.⁽⁵⁾ By the ancient law, acquisitions by the elder brother, without use of the family property, were partible with such of the rest as had cultivated learning; on the ground that, after the death of the father, being in *loco parentis*, he could not acquire for himself exclusively; but this consideration of the elder brother gradually subsiding, the distinction is worn out, and he stands, in this respect, as in others, now, upon the same footing with the rest.⁽⁶⁾ Wherever there has existed an employment of the

(1) Jim. Vah., ch. VI, sect. ii, note to § 1, and § 11.

(2) Jim. Vah., ch. VI, sect. i, § 10, 12, and note to § 51.

(3) 3, Dig., 346, et seq.

(4) Menu, cited in 3, Dig., 367.

Catyayana, cited in Jim. Vah., ch. VI, 1, 20.

(5) 2, Dig., 155, 158.

(6) Menu, ch. IX, 204, 109, 110.

3, Dig., 371.

Jim. Vah., sect. i, § 54.

joint funds, or a common exertion of the co-heirs, in either of which cases the acquisition is partible, the acquirer takes a superior share. In all other instances, that of property recovered excepted, a share, *extra* the number that is to divide, is given to the special acquirer, beyond his equal share; and, if more than one have been concerned with him, they participate in the excess.⁽¹⁾ In the instance of *property recovered*, the special claim of the recoverer is to a fourth only, instead of to a double share; the merit of recovering what has only been withheld, not being considered equal to that of making a new acquisition.⁽²⁾ But whether by this is to be understood a fourth of the whole property recovered, or only a fourth of an equal share, added to a share, seems uncertain.⁽³⁾ Claims to extra shares may of course be adjusted with consent of parties, being sometimes treated as discretionary in amount.⁽⁴⁾ But the specific measures are as has been stated. This effect of the use of the joint stock, in rendering separate acquisitions, in general, common, is attended sometimes with injustice, where, in cases of small patrimony, large fortunes are made by the unaided exertions of enterprising parceners; of which the benefit may eventually be shared by drones, who have in no degree conduced to their accumulation.⁽⁵⁾ Nor, to obviate this, is there any resource, where timely

(1) Jim. Vah., ch. VI, i, 23.—Mit. on Inh., ch. I, iv, 29.
Vasishtha, 3, Dig., 356, 405.

(2) Jim Vah., ch. VI, sect. 11, 39.—3, Dig., 366, 367.
Radhachurn R. v. Raghoonunda R.; Beng. Rep., ante, 1805, p. 26.

(3) Jim. Vah., ch. VI, sect. 11, 38.—Mit. on Inh., ch. I, iv, 3.
Note to 3, Dig., 366.—Beng. Rep., ante, 1805, p. 36.

(4) Post, Append. to ch. IX, p. 382.

(5) Ante, p. 7.—Post, Append. to ch. IX, p. 374.—E.

separation has been omitted ; a right to the benefit of each other's labors being incident, where co-partnership has continued, and the joint property been instrumental. But, where the latter has not been the case, the claim to participate fails, though made by an unseparated member. ⁽¹⁾

β. As to things *specialty divisible*; they are distinguishable from such as are *impartible*, in that the latter are so upon the grounds that have been stated, the former, in point of fact, being of a nature to render division inconvenient, if not, as is often the case, impracticable ; and for which, therefore, a virtual partition is substituted, where a direct one cannot easily, if at all, be had. Such are a road, a way, pasture for cattle, or a well ; with other instances that have been already incidentally noticed ; ⁽²⁾ and of which the number and kind are indefinite, liable to be modified by custom, whether local, or applicable to a particular class or community ; ⁽³⁾—and, in general, where this does not interfere, equality, subject to convenience, being the object, the means of attaining it appear to be left very much to the suggestions of reason and good sense, having regard to the circumstances of families, and the nature of the property to be divided.

3. *How partition takes place*.—Under this head are to be considered ; *first*, the modes that may be resorted

(1) *Soobuns Lal v. Hurbuns Lal* ; Beng. Rep., 1805, p. 7.

(2) 3, Dig., p. 372, et seq.

Daya Crama Sangraha, ch. IV, sect. ii, 13, et seq.

(3) *Catyayana*, 3, Dig., 375.

to for partition; *secondly*, the rules to be observed in making it. The modes being the same as on partition by a father,⁽¹⁾ namely, by arbitration, adjustment, or lot, in whichever way it is effected, the law prescribes an instrument in writing, called by Vrihaspati "the written memorial of distribution," but it has not rendered it indispensable.^{(2)(a)} It may be here remarked, that the instruments and agreements of the Hindus are, in point of form, models in their way. Penned in general by the village accountants, (*conicopolies*) while they express every thing that is material, they do so with a compactness and precision, not easy to be surpassed. A regular instrument of partition, being entitled according to its purport, the things distributed by it are specified by name, and may be inventoried on the back, the amount being noted also in figures, to preclude any fraudulent insertion subsequent. But they are considered to be best enumerated in the body; and this, so as to show what each has received, that the fairness of the division may appear. With the date, the names of the parceners are inserted, designated by those of their fathers, the same names, among Hindus, being usually common to many; for which reason, the paternal names of the drawer of the instrument, and of the witnesses to it, are added. Where it is *olograph*, there is the less necessity for witnesses; but they are in all cases recommended.⁽³⁾ The greatest credit attaches to such

(1) Ante, p. 180.—Post, Append. to ch. IX, p. 385.—E.

(2) 3, Dig., 408.—Post, Append. to ch. IX, p. 389.

(3) Vrihaspati, 3, Dig., 408, with the commentary.

Vajnyawalkya, 1, Dig., 23.

[(a) Actual possession of the shares by each member is essential to a valid division, although a deed of separation exist.—M. S. U. Dec., 1853, p. 125; 1857, p. 29; 1859, pp. 11, 260.]

an instrument, executed in the presence of, and attested by the Raja, and his officers;⁽¹⁾ by which is to be understood simply a public, authenticated attestation. What the law expects in general is, that it should be attested by kinsmen; the want of whom, however, and the consequent substitution of more distant relations, or even of neighbours, is always open to be explained.⁽²⁾ Such in fact is the order, in which witnesses for this purpose are classed; *kinsmen* being described as persons allied by community of funeral oblations, or as sprung from the same race; *relations*, as maternal uncles, and other collateral and distant relations of the family.

As to the partition itself, accounts being previously settled, and debts and other charges provided for,⁽³⁾ whatever course be adopted, the division of all, acquired as well as ancestral, must be intrinsically the same; *i. e.*, in general, equal, without deductions;⁽⁴⁾ making allowance for disqualifications resulting from defects, moral and physical.⁽⁵⁾ Even under the old law, the right of primogeniture, on partition, operated only upon what had descended, not upon that which had been acquired. With regard to this; an unequal augmentation of that which is ancestral leaves it still what it was, equally divisible; so, whatever is entitled to be considered as joint, is alike partible among all, without attention to the degree in which individuals may have contributed to its production; subject always to the

(1) 3, Dig., 416.

(2) 3, Dig., 414.

(3) Ante, pp. 156—181.

(4) Beng. Rep. Case 6 for 1818, p. 630.

(5) Ante, ch. VII, p. 142.

special claim of any one, for extra acquisitions.⁽¹⁾ So, where the enjoyment of what is in common may have been unequal, that of some having been greater than that of others, the shares upon a division are still to be the same, the law taking no account of greater or less expenditure, unless the difference be such as to exclude all idea of proportion, the object entirely selfish, or the circumstances of a kind to impute fraud.⁽²⁾ If the family of one brother, being more numerous than those of the rest, have, in the maintaining of it, incurred a greater expense, so it has been proportionate, and not excessive, the difference is not to be regarded when they come to divide; and the same principle applies as to what may have been laid out on the nuptials of a daughter, or the initiation of a son,⁽³⁾—occurrences, in Hindu families, which, it has been seen, constitute a charge on the joint property, where they are undivided.⁽⁴⁾ But, if one, giving a loose to pleasures, in which the rest have not participated, have thereby broken in upon the common fund to an extent not to be justified, he will, upon partition, receive his portion, diminished by what he has dissipated; though it is said, that if more than the amount of his share have been so expended, the law does not direct that the excess shall be considered as a debt.⁽⁵⁾ So, in the Bengal Provinces, but not in Southern India, an unproductive

(1) Menu, ch. IX, 205.—2, Dig., 584.

Mit. on Inh., ch. I, sect. iv, 31.—3, Dig., 387.

Post, Append. to ch. VIII, p. 312.

(2) 3, Dig., 391, to the end of the section.

Post, Append. to ch. IX, p. 394.—C.

(3) 3, Dig., 108.—*Daya Crama Sangraha*, ch. VII, 29.

(4) Post, Append. to ch. VIII, p. 170.

(5) 3, Dig., 299.—Vide ante, p. 157.

parcener may be shared out of the property acquired ; but must receive his portion of the original stock descended.⁽¹⁾ It is the same of a loan or gift, even for a good (as for a religious) purpose, if made by a parcener on his sole account ; or of a sale, a purchase, or an hypothecation ; the principle being, that the patrimony, or family property, is not to be arbitrarily aliened ;⁽²⁾ otherwise, where the purpose and end have been the support, the interest, or the spiritual benefit of the whole.⁽³⁾

4. With respect to *the proof of a disputed partition*, though the law favors separation, by which religious ceremonies are multiplied,⁽⁴⁾ it presumes joint tenancy as the primary state of every Hindu family ; and this especially among brothers, it being most natural for such “ to dwell together in unity”.⁽⁵⁾ Important as the question may be to strangers, appearances as to the fact are not always to be relied upon. The legal idea of *undivided*, regarding as it does, *property*, a family may be separated as to residence, meals, and ceremonies, so as to seem even to their neighbours, as well as to others, to be divided, without being so ; remaining, in truth, united in interest.⁽⁶⁾ As, on the other hand, having parted property, they may have become legally divided by a severance in their worldly concerns ; and yet, continuing to live and eat together,⁽⁷⁾

(1) 3, Dig., 67.—Ante, p. 187.

(2) Ante, p. 6.—Post, Append. to ch. IX, pp. 338, 339.—C.

(3) 2, Dig., 103.—3, Dig., 391, et seq.—Post, Append. to ch. IX, pp. 338, 339.—C.

(4) Menu, ch. IX.—2, Dig., 534.—3, Id., 76.

(5) Post, Append. to ch. IX, p. 347.—E.

(6) Id., p. 347.—E.

(7) Jim. Vah., ch. VI, sect. i, § 27.

performing also in common their solemn and accustomed rites, they will appear to be still united, though, in reality, and to legal purposes, they are no longer so.⁽¹⁾ This renders it, moreover, in many cases, where contested, (as it often is,) difficult to determine, whether the family be, or be not, a divided one. The question may arise among themselves, one member claiming partition, while the rest insist upon its having already taken place, at a time past. Or it may be raised by a creditor, having an interest in considering it as undivided, whereby he extends the fund for the payment of his debt, the credit having perhaps been given under this idea, though in truth, perhaps, a mistaken one. The obscurity in which it is sometimes involved, productive, as it is, not only of eventual litigation, but of occasional fraud and injustice, may be attributed to the law, allowing partition, without the presence of witnesses, or intervention of any deed ; thus leaving a transaction of such possible consequence to others, as well as to the family, to be performed in secret, resting in the breasts, and in the consciousness alone of the parties. . Where this has been the case, and the interest of any one is opposed to the claim, the fact remains to be collected from circumstances ; observing, wherever the English rules of evidence do not prevail, the distinctions that have been noticed, as to the order and credit of the witnesses.⁽²⁾

The presumption raised by the law, from the natural

(1) 3, Dig., 417, et seq.

Khodeeram Serma v. Tirlochun ; Beng. Rep., ante, 1805, p. 37.

(2) Ante, p. 213.

state of families, in favor of union, may be destroyed, by evidence of separate acts, inferring a contrary one, and amounting to proof of partition having taken place.⁽¹⁾ Such are for this purpose religious ones, the religious duty of co-parceners being single;⁽²⁾ dressing food; transactions inconsistent with the idea of their continuing united, as making mutual loans, sales, purchases, and other contracts; or becoming sureties, or witnesses for one another, on subjects of property.⁽³⁾ To which, as indicating the understanding of neighbours, may be added, delivery to them severally of provisions, and other dues, by the village peasants.⁽⁴⁾ Of each of these a little more at large, in their order.

Of the religious duties of the Hindu, some are indispensable, others in their nature voluntary. Of the latter sort are sacrifices, consecrations, the stated oblations at noon or evening, with whatever else there may be of a similar kind, the performance or non-performance of which respects the individual merely. It being, under any circumstances, competent to discharge these jointly or severally, it follows that the performance of them, the one way or the other, affords no inference as to the state to be investigated. The proof in question results from the separate solemnization of such, the acquittal or neglect of which is attended with consequences beneficial, or otherwise, to the individual, in his capacity of *Housekeeper*, (*Grīhastā*,) or master of

(1) Post, Append. to ch. IX, pp. 387, 395.

(2) Mit. on Inh., ch. II, sect. xii.

Nareda, 3, Dig., 407, 417.—Post, Append to ch. IX, p. 391.—C. and E.; and 393, 397.

(3) 3, Dig., 421.—Vrihaspati, Id., 427.—Yajnyawalkya, 1, Dig., 228.

(4) 3, Dig., 429.—Infra, p. 220.

1, Bombay Rep., p. 211.

a family, the third and most important order among the Hindus. Of this kind are among others, the five great sacraments, in favor of "the divine sages, the manes, the gods, the spirits, and guests," enumerated, described, and enforced by Menu; it being of such, of which it is said, that of undivided brethren the religious duty is single, *i. e.*, performed by an act in which all join; severing in them, and performing them separately in their respective houses *after* partition.⁽¹⁾ Still, such separate performance is not conclusive; it is a circumstance merely.⁽²⁾

Reciprocal gifts and mutual contracts are inconsistent with the relation of parceners; in which, generally speaking, everything is in common. They become evidence, therefore, where they appear, of partition having taken place. So, with regard to income and expenditure, with the infinite dealings in which men's interests are concerned, carried on without consulting each other, and this publicly, and without reserve; the same inference arises.⁽³⁾ As to separate acquisition, it concludes nothing, since, as has been seen,⁽⁴⁾ it may take place, consistently with co-partnership. And, with respect to any one, or more, of the instances specified, they are but evidence; though the concurrence of all, to constitute proof, is not requisite.⁽⁵⁾ The one the most to be relied upon is, the taking food, separately pre-

(1) Menu, ch. III, 69 to 81.—Anon. text ccclxxxviii, 3, Dig., 420. 3., Dig., 417, 418.

(2) Post, Append. to ch. IX, p. 391.

(3) 3, Dig., 418.

(4) Nareda, 3, Dig., 417.—Id., 419.

(5) Jim. Vah., ch. XIV, 10.

pared: Yet, as it may be matter of convenience, among parceners having large families, to have separate cookery, dressing their victuals apart, this also is but a circumstance, which may be explained; or its effect, in point of evidence, may be removed, by showing not separate, but joint preparation of grain, for oblations to deities, and the entertainment of guests, as well as for other purposes which, among united co-heirs, are essentially common. But, in general, a distinct preparation of food, after an agreement to separate, proves partition, and the previous agreement may in some cases be inferred from that sole evidence; but more satisfactorily in proportion as a greater number of the indicated circumstances concur.⁽¹⁾

Nor can brothers undivided, or other parceners, become sureties, or give evidence for each other,^(a) any more than make mutual loans.^(b) The connexion, so subsisting, forbids everything of the kind. With regard to their being witnesses for, or against each other, the restriction does not apply to cases of slander, violence, or the like; but only to matters affecting the joint interest, and so raising a direct objection to their competency. Testimony therefore between them, admitted in such a case, implies partition.⁽²⁾ Jaganatha, in the close of his chapter on the subject, admitting that liberties may be taken with the patrimony, inconsistent with the relation under which it is held, so

(1) 3, Dig., 421, 428.

(2) 3, Dig., 421, et seq.

[(a) In cases where the English law of Evidence prevails, incompetency arising from pecuniary interest no longer exists (Act II of 1855, Sect. 17) and therefore the presumption of partition alluded to in the text cannot be drawn from the simple circumstance of one brother having been admitted a witness in a suit affecting another or the family interests generally.]

[(b) Self-acquired funds may be advanced for improvement of ancestral property subject to re-payment.—I, Mad. High Court Rep., 309.]

as to render equivocal, as proof of partition, many of the acts that have been alluded to, sums up the whole in the following words:—"In a doubt (says he) respecting a prior distribution, among those who severally transact commercial affairs, and the like, but without having separated their preparation of food by a previous agreement, what (he asks) is the rule of decision, if the dispute concern that property, to which the transactions relate? Deduce the principle of decision (he answers) from reciprocal gift and receipt: for, in that case, donation, which is an act done for a spiritual end, has been made in contemplation of abundant fruit from liberality to a kinsman. Again, the people know whether these co-heirs have separated their preparation of food by previous agreement or not. Again, do the peasants deliver to them, severally, the provisions, and other dues from their village? Hence also a principle of decision may be deduced. In like manner, the question may be determined by their annual obsequies for a deceased ancestor, and by their worship of *Lachsmi*, or other deities, and the like." On this topic Jimuta Vahana adds,⁽¹⁾ "this, and similar acts, can only be done severally by divided co-heirs; any one of them must therefore be considered as a presumptive proof of partition, on failure of written, and oral evidence."⁽²⁾

5. It remains to consider some matters subsequent, supposing a partition to have taken place. In general, once

(1) Jim. Vah., ch. XIV, 9.

(2) 3, Dig., 428.

made; it cannot be opened.⁽¹⁾ Yet, if effects that were not forthcoming at the time, be afterwards recovered, in a way to warrant a claim to participation; and much more if *concealment* had taken place, a discovery leads to a second division.⁽²⁾ In the latter case, the tenderness of the law, as to the means of ascertaining the fact, is remarkable, as if anything like an exertion of authority for the purpose were, if possible, to be avoided; by which, however, is to be understood only, that persuasion is to be used in the first instance, rather than coercion;⁽³⁾ it being admitted that, the former failing, more effectual ones may be resorted to, such as *ordeal*;⁽⁴⁾ a mode of course not to be adopted in our Courts, in which trials and processes of all sorts are to be according to the provisions of their respective charters, or commissions. All authorities at the same time agree, that, to justify an ultimate proceeding of the kind, in order to force a discovery from an unwilling concealer, there should be a preceding enquiry, founded, not upon the light suspicion of any individual, but upon circumstances, the law forbidding hasty recourse to ordeal.⁽⁵⁾ This delicacy, suitable to the intimate relation of the parties, is by some referred to the consideration, that *concealment* is simply a moral offence,⁽⁶⁾ as opposed to *theft*, which is defined to be the taking of another's goods, where there exists in the taker

(1) Vrihaspati, 3, Dig., 399.—Id., 400.

(2) Catyayana, 4.—3, Dig., 398.—Id., 441.—Jim. Vah., ch. XIII, § 7.

(3) Jim. Vah., ch. XIII, § 7.

(4) Catyayana, 3, Dig., 395.—Id., 402.

(5) 3, Dig., 397.—See also 2, Id., 9.—Culluca Bhatta, 1.—Id., 440.

(6) 3, Dig., 391.

no common property.⁽¹⁾ On discovery, distribution takes place, subject to the question, whether the concealer, who would have fraudulently appropriated what he kept back, is to receive, with the rest, an equal share. That he should, may be cited a number of authorities, including that of Jimuta Vahana;⁽²⁾ to these may be opposed the reasoning of the Mitacshara,⁽³⁾ with the analogy of the text of Menu,⁽⁴⁾ which, in the case of an elder brother defrauding his younger ones, visits him at once with punishment and privation. Nor, upon the principle of its being still undivided, is he, by whom it has been attempted to embezzle, answerable for what he may have used, provided his consumption have not been more than would have subjected him to account, in the ordinary course of the employment by one co-parcener, of property belonging in common to himself and the rest.⁽⁵⁾ But, independent of concealment—

Wherever, from any cause not understood at the time, the division proves to have been *unequal*, or in any respect *defective*, it may be set to rights, notwithstanding the maxim that, “*once is partition of inheritance made* ;”^{(6)(a)}—a position, that supposes it to have been fair, and made according to law.⁽⁷⁾

- (1) Jim. Vah., ch. XIII, § 8, 9, 15, and note.
3, Dig., 397. Commentary on Yajnyawalkya.—Id., 401.
- (2) Jim. Vah., ch. XIII, § 2.—3, Dig., 390, 397, 398.
Daya Crama Sangraha, ch. VIII, 2.
- (3) Mit. on Inh., ch. I, sect. ix, § 4, 5, 12.
- (4) Menu, ch. IX, 213.
- (5) 3, Dig., 402.
- (6) Menu, ch. IX, 47.—3, Dig., 214.
- (7) Menu, ch. IX, 218.—Jim. Vah., ch. XIII, § 4, 5.
Catyayana, 3, Dig., 398.—Id., 397, 399, 400, 401.
Daya Crama Sangraha, ch. V, 22, 23, and VIII, 4.
Ante, p. 184, (2).

[(a) Where an unequal disposition was unchallenged for 19 years, acquiescence was presumed.—*L. M. Pitchama v. L. M. Goozuppa*.—Madras Sudder Court Dec., 1859, p. 84.]

Distinct both from fraud and mistake, is the case, where, the partition not having been completed when it was begun, a *residue* remains undivided; upon which the rule is, that while it continues in the possession of any of the co-heirs, the title to their shares, of such as remain at home, is preserved to them to the fourth generation; and, where the ancestors of any one have been so long absent abroad, it is good as far as the seventh.⁽¹⁾ But, whether, in other respects, an undivided residue shall be subject to rules of succession relative to separated, or unseparated brothers, a difference of opinion exists.⁽²⁾ In the meantime, pending its suspension, contrary to the course while the family continues generally undivided, the acquisition of a separated parcener, by means of such residue, is exclusively his; subject to an equitable allowance by him for the use he may have made of it; analogous to the case, as among partners in trade, to whom in general the law of co-heirs bears no affinity.⁽³⁾

Not only may an original partition be reformed, by means of a supplemental one, but there may be an entirely new one, upon a *re-union* of any of the separated parcnors, competent to the purpose;⁽⁴⁾ and this, as well after partition by a father, as among co-heirs.⁽⁵⁾ The

(1) Jim. Vah., ch. VIII.
Devala, 3, Dig., 10.—Vrihaspati, Id., 443.
Ante, pp. 178, 196.

(2) Post, Append. to ch. IX, p. 388.
Mit. on Inh., ch. I, sect. vi, 2 and 16.

(3) 3, Dig., 401.

(4) Mit. on Inh., ch. II, ix, 3.
Vrihaspati, 3, Dig., 512.—Id., 553.
Daya Crama Sangraha, ch. V, 3, et seq.

(5) Jim. Vah., ch. XII, 3.

deduction to which, by the old law, an elder brother was entitled to an original partition, merged on a re-union, reviving to him upon re-partition, being a privilege he could enjoy but once.⁽¹⁾ A re-united parcener dying while the re-union continues, leaving no issue, but a widow, according to the Mitacshara,⁽²⁾ she is entitled to maintenance only, the deceased's share vesting by survivorship in his co-parceners; it being affirmed by Vachespatis Misra,⁽³⁾ that all texts suggesting her succession, in preference to them, relate to the estate of a husband who has made a partition with his brothers; while Jagannatha, reviewing the various opinions that exist upon the point,⁽⁴⁾ contends that there is no difference in this respect, whether divided, or undivided: so that the schools differing, it may be liable to be differently determined, according as the one or the other prevails, in the Bengal Provinces, or in those depending on the Government of Madras. Other claims being disposed of, if the surviving re-united parceners be partly of the whole, and partly of the half blood, those of the whole take in exclusion of those of the half:⁽⁵⁾ while, consisting of half blood only, any dis-united co-heirs of the whole divide with them,—union in blood being, for this purpose, equivalent to re-union in co-parcenary.⁽⁶⁾ And the participation of the

(1) Menu, ch. IX, 210.—Jim. Vah., ch. XII, 1.

Note on 3, Dig., 550.—Vrihaspati, Id., 476, 552.

(2) Mit. on Inh., ch. II, ix, 4.—See also Yajnyawalkya, 3, Dig., 450, 467, Vasishtha, Id., 477.—Vachespatis Misra, Id.

(3) Vachespatis Misra, 3, Dig., 477.

(4) 3; Dig., 478.—See also Menu, ch. IX, 212.—Vridhha Menu, 3, Dig., 478, Vrihaspati, 3, Dig., 476, 488.—Çulluca Bhatta, Id., 477.

(5) Mit. on Inh., ch. II, sect. ix, 8.

(6) Mit. on Inh., ch. II, sect. ix, 9.

half blood at all in this case regards the real estate only; for, as to moveable effects, they at all events descend exclusively to the whole blood; re-united or not.⁽¹⁾ The share of one who has entered into the fourth order, or become otherwise disqualified, on repartition, vests in his representatives;⁽²⁾ and, in general, the rules prescribed for an original partition are applicable to the one in question.⁽³⁾

Partition of estates by the Athenian law has met with its advocate in the eminent translator of the speeches of Isæus;⁽⁴⁾ and the last public act of the celebrated Mirabeau was the preparation of an argument, (of which death prevented the delivery by him in the National Assembly,) against the testamentary power, as a source of inequality and injustice in the transmission of property. The system of perpetual partition may be proper for democratic governments, like Athens of old, and modern America. It exists partially in England under the denomination of *gavelkind*, a remnant of the old Saxon law; but has long been wearing out, not being adapted to a constitution like ours, in which unequal fortunes, and hereditary wealth, are indispensable to the maintenance of that aristocracy, or intermediate class, between the prince and the rest of the people, which forms one of the essential orders of the State. For the same reason, it is unsuitable to France, as settled under its late, and present Charter. It may be consistent for despotic

(1) Jim. Vah., note to ch. XI, sect. v, 36.

(2) Mit. on Inh., ch. II, sect. ix, 13.—3, Dig., 476.

(3) Jim. Vah., ch. XII, 5.—3, Dig., 549, et seq.

(4) Commentary on Isæus, by Sir William Jones, p. 168.

countries, such as India ; by preventing that accumulation, which has a tendency to produce checks on the supreme power. Accordingly, the great Zemindaries of Bengal having been, by the custom of the country, or usage of particular families, descendible to the eldest, or other appointed son, in exclusion of the rest, it became the policy of Lord Cornwallis, when Governor-General, to adopt means for breaking them gradually down, by subjecting them, as deaths happened, to the law of partition.⁽¹⁾ It has been supposed indeed that, till our possession of them, *all* property was, in those provinces, among Hindus, so descendible, *i. e.*, to the eldest son exclusively. Had it been so, the conclusion would be, that it had been rendered so by their Mahomedan conquerors, innovating upon their ancient institutions. Whatever opinion may be entertained of its policy, the course of inheritance, as it at present obtains, with this class of natives, throughout India, is consonant to their original law,⁽²⁾ though, how far to the advancement of the species in arts, and civilization, may be doubtful.

(1) Eleventh Bengal Regulation, 1793.—Ante, pp. 188, 198.

Post, Append. to ch. LX, p. 330.

(2) Menu, ch. VII, 203.

CHAPTER X.

ON WIDOWHOOD.

It has been seen, in a former chapter,⁽¹⁾ that the wife surviving her husband, succeeds as heir to him, in default of male issue.^(a) It remains to be shown in the present, how the widow's property descends, whether inherited from her husband, or otherwise derived, premising some account of the state of widowhood among the Hindus ;—a condition too peculiar, not to justify a distinct and separate consideration. The entire subject will be comprehended generally under the two following heads : viz. I, What regards her *person* ; II, What regards her *property*.

I. In considering the law as it regards her person, three things in particular offer themselves to our attention ; 1, Her obligation to *burn* ; 2, The restriction she is under with respect to a *second marriage* ; 3, Her *dependance*, in other respects.

1. The first thing that occurs, in contemplating the state of widowhood among the people in question, is, its horrid termination, almost the moment it commences,—in instances, in which religious enthusiasm has been made to operate, on the hopes and fears of the

(1) Ch. VI.

[(a) Supposing, of course, the family to be a divided one. If undivided, she is entitled to maintenance only.]

deluded victims;—to *burn* with her deceased husband,^(a) being inculcated upon the Hindu widow, not out of respect to his memory merely, but as the means of his redemption, from the unhappy state into which he is believed to have passed;⁽¹⁾ and, as ensuring, in consequence, to herself, (not everlasting indeed, but) long-continued felicity. Ascending his pile, and casting herself with him into the same flame, she is said “to draw her lord from a region of torment, as a serpent-catcher “draws a snake from his hole.” *Her* virtue expiates whatever crimes *he* had committed, even to the “slaying a Brahmin, returning evil for good, or killing “his friend.” And, for this proof of it, a kind of Mahomedan paradise is promised her. They mount together to the higher regions; and there, *with the best of husbands*, lauded by choirs of *Apsaras*, she sports with him as long as fourteen *Indras* reign;—or, according to another medium of computation, for so many years as there are hairs on the human body.⁽²⁾

Absurd as all this is, it is disgusting to have to enumerate the precautions existing, in order to guard the

(1) Angiras, 2. Dig., 451.—Vyasa, Id., 454.

Asiatic Res., vol. iv, p. 209, 8vo. edit.—Ante, ch. III, p. 61.

(2) Angiras, 2. Dig., 451.

Nec minus uxores famâ celebrantur Eoræ.

Non illæ lacrymis,—non fœmineo ululatu

Fata virâm plorant; verum (miserabile dictu)

Consconduntque rogum, flammâque vorantur eâdem!

Nimirum credunt veterum sic posse maritum

Ire ipsas comites, tœdamque novare sub umbris.

DE ANIM. IMMORTAL. i, 177.

Conjugis, Evadne, miseros elata per ignes,

Occidit;—Argivæ fama pudicitia.

PROPERT. 1, i, El. 15.

See also Euripid. Suppl. Act. v;—and an affecting instance in vol.

i, p. 190, of Sir John Malcolm's Memoir of Central India; together with Id., vol. ii, p. 296, note.

[(a) The practice of suttee, or burning or burying alive of widows with their deceased husbands, is, by Reg. I of 1830, Madras Code, declared illegal, and punishable by the Criminal Courts.]

exercise of so scandalous a superstition ;—regulation, in such cases, having, in some degree, the effect of sanction, as is the case with respect to gaming and other pernicious vices, in countries in which they are made subservient to revenue. And yet, while it is allowed to continue, it would, without some interference of the kind, be pregnant with tenfold murders, of the most horrid description. Hence, the burning, to be what is called legal, with a view to its prevention, when it may be confessedly inadmissible, or under circumstances rendering it so, must be with the privity of the ruling power. And as, in every instance in which it can be endured, the sacrifice, on the part of the victim, must be voluntary, it follows that it can be performed only by an adult, in possession of her faculties, and free ;—not stupified for the purpose by drugs, nor influenced by designing Brahmins, or interested relatives ; still less impelled by violence.⁽¹⁾ Of the latter, occurrences are but too frequent, where, from her inability to sustain the fiery trial, the unhappy devotee, relenting, is prevented from escaping, by the agency of persons prepared,—connexions for the most part ;—who, to obviate the disgrace of failure, to say nothing of less justifiable motives, will sometimes with bamboos, push her into the hottest part of the fire ; keeping her there by force, till life is extinct ;—a conduct amenable to prosecution, but of which no instance appears, otherwise than as for a misdemeanor ; though it goes nigh to realize the martyrdom of St. Lawrence. In order that nothing of the kind may happen, the local

(1) 2, Bombay Rep., p. 95.

authorities having had timely notice of what is about to take place, it is customary for the police officers to attend, and see that what may be in itself lawful, be legally performed ;—*omnia rita esse acta* ;—to apply a grave and salutary maxim, to a fiend-like proceeding ! Pursuing the same system of restriction, in a case where the thing is intolerable, and ought not to be permitted, to no woman is it permitted to burn, being pregnant at the time ;⁽¹⁾—a condition, in a female, that has the effect with us, of suspending execution in a capital case ;—nor, if she have children, or a child, not exceeding three years of age, unless some one will undertake to provide for it, or them, a suitable maintenance. This must be by engagement in writing, on the part of the nearest relation of the deceased. In the three inferior castes, the practice exists of cremation at a time subsequent, more or less, to that of the burning of the body of the husband, where he has died at a distance from the wife. It is called *Anoomurun*, in contradistinction to *Suhumurun*, importing to burn with it. But, to render *Anoomurun* legal, there should have existed some sufficient reason, why simultaneous burning could not take place ; and the burning subsequent must follow, if at all, immediately upon the first notice of the death ; the widow also being at the time in possession of something belonging to the deceased, to be burned with her, as of his turban, or sandal, which are the most usual symbols : though, according to circumstances, it may be his stick, his dagger, or his helmet : and, in an instance that occurred a few years

(1) Bombay Rep., p. 95.

ago, among the Mahrattas, some of the bones of the deceased were sent to his widow for the purpose. But, to a Brahmin widow, *Anoomurun* is altogether incompetent; she can burn only on the same pile with her husband; so that, in the instance just alluded to, which was that of a Brahmin, the act was considered as having been illegal, unless to be justified by local custom, in opposition to the Shaster; and this notwithstanding that a part of the body of the deceased had entered into the ceremony.⁽¹⁾ By the Hindu law, as well as by ours, suicide is a crime; but the contrary is declared in this instance,—the motive sanctifying the act.⁽²⁾

Thus reprobated, that the practice has in it more of *malus usus*, than of law, may be inferred from the silence of Menu, and other high authorities; who, as the condition on which the widow may aspire to Heaven, have simply required that she should, on the decease of her husband, live a life of seclusion, privation, and decency.⁽³⁾ Recommended only by the Shaster, (whence any attempt to suppress it has been discouraged)⁽⁴⁾ it is confined pretty much to the lower class;—a proof, that it has no deeper root in the religion, than it has in the law of the country; from all which the conclusion would be, that it is a subject fitter for abolition, than for regulation.

2. To this tyrannic instance of martial selfishness must be added the prohibition to women of *second mar-*

(1) *Brahma Purana*, 2, Dig., 455.—*V. N. Purana*, 2, Dig., 456. Vyasa, Id., 453.—*Asiat. Res.*, vol. iv, p. 12.

(2) *Brahma Purana*, 2, Dig., 455. See Post, Append. to ch. vii, p. 259.

(3) Post, p. 235.

(4) See Col. Wilk's Sketches, vol. i, p. 499.

riages; ⁽¹⁾ and that this should apply, as it does, even to *virgin* widows, ⁽¹⁾ is an abomination, surpassed only, if at all, by the practice that has just been denounced. The husband having kindled sacred fires, (*into which he is not expected to enter*,) and having performed funeral rites to his wife, *whom he has survived*, “may again marry, and again light the nuptial flame.” ⁽²⁾ Nay, so incumbent upon him is it to do so, with a view to his resuming the order of a *Housekeeper*, ⁽³⁾ (*Grihasta*), that he is not to delay it a single instant. ⁽⁴⁾ But a widow who, though childless, slights her deceased husband by *marrying again*, not only brings disgrace on herself here below, but, according to the belief inculcated, is to be excluded from participating with him in another world; ⁽⁵⁾ a *second husband* being declared to be a thing not allowed to a virtuous woman, in any part of the Hindu Code; ⁽⁶⁾ by which, when her lord is deceased, she is directed “not even to pronounce the name of another man.” ⁽⁷⁾ That the prohibition is as old at least as Menu, appears from the references to his Institutes; though, from its being included in the enumeration of things forbidden to be done in the present age, ⁽⁸⁾ a time is implied when it did not exist. That second marriages, by women, are practised in some of the

(1) General note at the end of translation of Menu, p. 364. Asiatic Res., vol. vii, p. 310.

(2) Menu, ch. V, 168.

(3) Ante, p. 23.

(4) 3, Dig., 106.

(5) Menu, ch. V, 161.

(6) Menu, ch. V, 162.—IX, 65.—See also Id., 175, 176. Post, Append. ch. X, p. 400.

(7) Menu, ch. V, 157.

(8) General note, at the end of translation of Menu, p. 364.

[(a) This restriction also has been abolished. See note at the end of this chapter, where the rights and privileges of a widow who has re-married are noticed.]

lower castes⁽¹⁾ is, according to Hindu prejudices, no argument in their favor; these castes being, in many instances, not within the contemplation of the law. In the territories lately conquered from the *Peishwa*, a tax was found established on the *marriage of widows*, but the description given by the report,⁽²⁾ in which they are noticed, rather confirms the restriction; at the same time that the practice implied gives color to an account, of its having been determined, some years ago, by an assembly of Brahmins at Poona, in the case of a young woman, (of family,) who had lost her husband, before she had been admitted to his bed, that she need not *burn*, but might *re-marry*.⁽³⁾ Here might be discussed the course that once subsisted, permitting the widow of a childless husband, or the wife of an impotent one, to raise up issue to him, by the intervention of his brother, or other kinsman, or even of a stranger authorized for the purpose. The husband gave the authority; and, he being dead, the act was legal, if sanctioned by his friends, or other guardians of the widow.⁽⁴⁾ But it belongs also to the subject of *adoption*; in the Appendix to the chapter upon which it will be found noticed, at sufficient length, considering that it is obsolete, and that, even while it prevailed, it was reprobated, and confined accordingly to the servile class.⁽⁵⁾

(1) 3, Dig., 149. — Post, Append. to ch. x, pp. 399, 400. — C.

(2) The Honorable Mountstuart Elphinstone's Report, pp. 37, 38, and Append. to same, p. 7.

(3) Asiat. Journ. for July 1822, p. 8.

(4) Vrihaspati, 2, Dig., 475. — 1, Id., 325.
General note to translation of Menu, v, 3.

(5) Post, Append. to ch. iv, p. 201.

3. Not only is a Hindu widow restricted from marrying again, but *continence* is exacted of her, at the peril of forfeiting her exclusive property, as well as her right to maintenance ;⁽¹⁾ as, in the event of her husband dying, under circumstances to entitle her to succeed as heir, a want of it, while he lived, bars her claim ; as a failure in it subsequent, unexpiated, deprives her of the inheritance, after it have vested.⁽²⁾ Accordingly, it is required of her to reside, after his death, with the son, or sons of her husband, if he have left any ; —and, if not, with his other relations,⁽³⁾ among whom *guardians* are to be selected for her,⁽⁴⁾ the right of appointment resting ultimately, as in the case of minors, with the king ;⁽⁵⁾ —the policy of the Hindu law, with regard to the sex, being, that it is never, at any period of their lives, or under any circumstances, to be independent.⁽⁶⁾ “ Day and night (says Menu,) must “ women be held by their protectors in a state of “ dependence. Their fathers protect them in childhood ; their husbands protect them in youth ; their “ sons protect them in age. A woman is never fit “ for independence.”⁽⁷⁾ And a preceding text, in which the same condition is unculcated, establishes her dependence, if she have no sons,” on the near “ kinsmen of her husband ; if he left none, on

(1) Ante, pp. 153, 162.

(2) 3, Dig., 479.—Post, Append. to ch. vii, p. 272.

(3) Jim. Vah., ch. XI, sect. i, 56, 57.

(4) Jim. Vah., ch. XI, sect. i, 64.

(5) Menu, ch. VIII, 28.

Post, Append. to ch. vii, p. 272.—C. ; ch. viii, p. 309.—C.

(6) Yajnyawalkya, 2, Dig., 381.—Anon, Id.—Nareda, 2, Dig., 384.

(7) Menu, ch. IX, 2, 3.

“ those of her father ; and, having no paternal kinsmen, on the sovereign ; ” concluding, as already stated, that “ a woman must never seek independence ; ” and carrying the principle the length of declaring, that “ by a girl, or by a young woman, or by a woman advanced in years, nothing must be done, even in her own dwelling place, according to her mere pleasure.”⁽¹⁾ Failing relations of her husband, she is to reside with her own, enjoying their protection, and being subject to their control. *If she do not like to burn*, the alternative for her is a life of austerity and privation ;⁽²⁾ for the securing of which it is, that her liberty, in disposing of herself, after the death of her husband, is thus restricted ; the same reserve, for the same purposes, being also enjoined to her, in case of supersession,⁽³⁾ or of her husband happening to be absent.⁽⁴⁾ To the *virtuous* widow, persevering in the system of self-denial prescribed for her, not only are honor, and protection, and maintenance pledged during life, but the prospect also of heaven is expressly held out to her, *though childless* ; it being expected she should live in the practice of austerities, with suppressed passions : foregoing everything like show in dress, and luxury in food ; using such property as she has for necessities, including religious purposes ; but not in lavish expenditure, or indiscriminate alienation, as humour or fancy may prompt. That she should be

(1) Menu, ch. V, 147, 148.

(2) Menu, ch. V, 150 to 161.—Vishnu, 2, Dig., 459.

(3) Ante, p. 40.—Post, Append. to ch. x, p. 401.—C.

(4) Sancha and Lichita, 2, Dig., 448.—Yajnyawalkya, 2, Dig., 450.

under some control, seems so far consistent since, as her husband's relations are bound to provide for her in case of need, they have a claim to the means of preventing her, by her improvidence, from falling into distress, and so requiring their assistance. To this extent, therefore, their interference, not degenerating into treatment unnecessarily harsh, much less insufferably cruel, might be deemed to be within the scope of that *domestic* authority, the exercise of which, as legitimate, has been preserved to the Natives by the legislature, in those acts, upon which the charters, establishing the King's Courts at the several Presidencies, are founded.⁽¹⁾

II. As to her *property*.—Her right of inheriting to her husband, and that not attaching, her claim to be maintained by his representatives having been discussed in former chapters,⁽²⁾ it remains to treat of her power over what she has, and to show how it vests at her death; distinguishing between what she possesses in right of her husband, and her *Stridhana*; which, as has been seen,⁽³⁾ is more emphatically her own. With respect not only to what she may have inherited from her husband, but to its accumulated savings also, her duty is to regard herself as little more than tenant for life, and trustee for the next heirs, of property so possessed; being (as already intimated) restricted from aliening it, by her sole independent act, unless for necessary subsistence, or purposes

(1) *Shevochund Rai v. Luhung Dasee*; Beng. Rep, ante, 1805, p. 24. 21, Geo. 3, ch. LXX, § 18.—37, Geo. 3, ch. CXLII, § 40.

(2) Ch. VI, p. 123.—ch. VIII, p. 161.

(3) Ante, p. 14.

beneficial to the deceased.⁽¹⁾ If in anything she may take liberties with it, it is in making pious and charitable gifts, with presents to her husband's relations and dependents, but not to her own, without their assent; the concurrence of her legal guardians and advisers, as well as of her husband's heirs, being generally necessary to any alienation by her of such property;⁽²⁾—by heirs being meant, not the immediate ones merely, but the whole, living at the time;—their assent to be manifested by their attesting the conveyance, or by other expression of it in writing. The restriction, however, in the extent stated, seems to concern lands only; with this difference between the Bengal and Benares schools, that the former confines it to such as has been derived from her husband;—the latter, prevailing to the southward, to land held by her, under whatever title; the law also requiring a deed, and seisin, to perfect the transfer.⁽³⁾ Whereas, with regard to moveables, (slaves excepted, that are considered as land) she

- (1) *Shevochund Rai v. Lubung Dasee*; Beng. Rep., 1805, p. 24. Id., 1812, p. 344.
Jim. Vah., ch. XI, sect. i, 56, 57.
Daya Crama Sangraha, ch. I, sect. ii, 3, 5.
Ante, p. 15.—*Post. Append. to ch. vi*, p. 251.
Id., to ch. x, p. 408, 409.
See also, I, *Bombay Rep.*, pp. 412, 415, 423.
- (2) *Jim. Vah.*, ch. XI, sect. i, 56, 63, 64.
3, *Dig.*, 463 to 473.—*Id.*, 576, 626, et seq.
Shevochund Rai v. Lubung Dasee; Beng. Rep., ante, 1805, p. 24.
Beemloh Dibeh v. Goculnoth; *Id.*, p. 32.
Mahooda, &c. v. Kuliani; *Id.*, p. 67.
Gungoram Radaree v. Kashlakant R.; *Id.*, ante, 1813, p. 263.
Gopulchund Chuckavourte v. M. Rojune; *Id.*, 1816, p. 500.
Post. Append. to ch. x, pp. 407, 408, 409.
- (3) *Jim. Vah.*, ch. IV, sect. 23, note.
Nareda, 3, *Dig.*, 575.—*Catyayana*, *Id.*, 576.
Sham Singh v. M. Umrootee; Beng. Rep., ante, 1813, p. 395.
Post. Append. to ch. x, pp. 408, 409.

has a greater latitude ; reserving always one-half for the due performance of his funeral obsequies.⁽¹⁾ And her *Stridhana* being peculiarly hers, whatever falls under this description, would seem to be not only hers without reserve, for present use ; but to be at her independent, and uncontrollable disposal.

It has been seen, in a preceding chapter,⁽²⁾ how the property of a woman descends, she dying in the life of her husband. Of that which devolves on her from him, he dying, leaving no son of any description, the landed part, or whatever comes under that description, descends on her death to *his* heirs, not to *hers* ; the principle being, that it vests in those who would have taken it upon his death, had she at the time not existed.⁽³⁾ This, in the case supposed, is the daughter, or daughters of her husband, if he have left any ; for the sake (as is said) of the male issue, which they have or may have ; and, on this ground, liable to be postponed to a sister, having a son. So say the writers of the Eastern school.⁽⁴⁾ But, according to the Mitacshara,⁽⁵⁾ and its followers, property, which the widow may have acquired by inheritance, is transmissible to her own heirs, classing with this school as part of the *Stridhana* ; of the descent of which some

(1) *Şree Narrain R. v. Bhyā Iya* ; Beng. Rep., 1812, p. 343.

Mohun Lal Klan v. Raneē Siroomunnee ; Id., 352.

2, Bombay Rep., p. 428.

(2) *Ante*, p. 39.

(3) *Post*, Append. to ch. x, p. 404.

(4) *Jim. Vah.*, ch. IV, sect. i, 7.—Id., XI, i, 57, et seq.

3, Dig., 468, 472, et seq., 576, 926.

Mt. Bijya Dibeh v. Mt. Unpoorna D. ; Beng. Rep., 1806, p. 86.

Post, Append. to ch. x, p. 402.—C.

(5) *Mit.* on *Inh.*, ch. II, sect. xi, 2, and note.

See Beng. Rep., 1812, p. 344.—*Post* Append. to ch. x, p. 404.

account is next to be given, the nature of it having been already explained, in a former chapter.⁽¹⁾

Of Stridhana, or woman's "property," (as it is denominated) its peculiarity is seen in nothing more than in the intricacy with which succession to it is regulated; depending as it does, not upon rules, or texts, relative to property left by a man,⁽²⁾ but upon the *form of marriage*,⁽³⁾ the *source* from which it has been derived, to the *time* when it was *acquired*. Belonging to an *unmarried* female, with exception of a nuptial present, (which, where it exists, reverts on her death to the bridegroom,) her *Stridhana* goes first to her uterine brothers,⁽⁴⁾ whom failing, to her parents in succession, the mother taking before the father;⁽⁵⁾ and if to a *married* one, whether she die, living her husband, or a widow, the immediate heirs to it, including personality inherited from her husband, with land also, according to the *Mitacshara*, are her lineal descendants in the female line;⁽⁶⁾ the reason of which is not very creditable to the good sense of the law, founded as it is, on a supposition, that *portions of the mother abound in her female children*, the notion being, that "a male child is procreated, if the seed predominate, but a female, if the woman contribute most to the

(1) Ante, ch. I, p. 14.

(2) 3, Dig., 610, 603.

(3) Mit. on Inh., ch. II, sect. xi, 30.

(4) Post, Append. to ch. x, p. 411.

(5) Jim. Vah., ch. IV, sect. iii, § 7.

Gautama, 2, Dig., 614.

Baudhayana, Id., 612, 615.

(6) Menu, ch. IX, 131, 192, 193, 195.

Mit. on. Inh., ch. II, sect. xi, 9, 12, et seq.

3, Dig., 589, 595, 597, 600, 607.

“*fœtus*,”⁽¹⁾ so apt were the old Hindulawyers to mix, with their gravest reasonings, ideas not less absurd, than, according to ~~our~~ conception, indelicate. The course of succession, in the female line, is the same with that which is established, where daughters inherit, mediately or immediately, to their father.⁽²⁾ After daughters, and grand-daughters, the property in question goes to sons, in a certain prescribed order;⁽³⁾ and, in default of all issue, the succession varies, according to circumstances. The marriage having been in an approved form, and the wife dying without issue, the husband, (surviving,) and his kin successively, are her heirs;—if in any of the less approved ones, her own;⁽⁴⁾ and one course, is ordained with reference to what was obtained by her on her nuptials; another, as to what may have been acquired by her during her *coverture*.⁽⁵⁾ Beside which, other distinctions prevail, particularly with respect to her *fee*, or *perquisite*, described by some, as the present made her upon soliciting her in marriage,⁽⁶⁾ by others, as the bribe to induce her to go to her husband’s house, upon its final solemnization.⁽⁷⁾ Advert-

(1) Menu, ch. III, 49.

Mit. on Inh., ch. I, sect. iii, 10.

(2) Ante, ch. VI, p. 126.

(3) Mit. on Inh., ch. II, sect. xi, § 9.

(4) Menu, ch. IX, 196, 127.

• Jim. Vah., ch. IV, sect. ii, § 24, 25, sect. iii, § 2, et seq. and § 6.

Mit. on Inh., ch. II, sect. xi, § 10, 11.—3, Dig., 606.

• Post, Append. to ch. x, pp. 411, 412.

(5) Ante, p. 38.

(6) Note to Jim. Vah., ch. IV, sect. i, § 5.

(7) Jim. Vah., ch. IV, sect. iii, § 21.

Mit. on Inh., ch. II, sect. xi, 5.—3, Dig., 570.—Ante, p. 17.

Daya Crama Sangraha, ch. II, sect. iii, 17, 18.

ing to each, the law has settled the succession to the greatest imaginable extent; as will appear by reference to the works that treat at large on the subject,⁽¹⁾ including the "Summary" by Srikrishna, subjoined to the appropriate chapter in the Daya Bhaga of Jimuta Vahana,⁽²⁾ which summary will be found in the Appendix to this work.⁽³⁾ To what extent these distinctions prevail in practice, can only be known by local investigation; *usage* being a branch of Hindu law, which, wherever it obtains, supersedes its general maxims.⁽⁴⁾

It being far from the purpose of these pages to uphold with reference to the Hindus, any system, whether of abuse, or of unmerited admiration, but their object, on the contrary, being, to represent, with all practicable exactness, a faithful outline of their *institutes*, within the professed limits, as the same is to be collected from resources within our reach,—the deformity of their law, as it, in many particulars, respects the sex, especially in its widowed state, has been impartially exhibited. Ungracious as it may appear, the question will still occur, as to the *degree* in which such a code of restraint and privation is acted upon; *how* it operates in families; what may be the *real*, as well as the *legal*, state of

(1) Jim. Vah., ch. IV.—Mit. on Inh., ch. II, sect. xi.
3, Dig., 557.

Daya Crama Sangraha, ch. II, sect. iii, 4, 5.

Frankishen Sing v. Mt. Bagwhutee; Beng. Rep., ante, 1805, p. 3.

(2) Jim. Vah., p. 100.

(3) Post, Append. to ch. x, p. 414.

(4) Menu, ch. I, 108, 110.—Ch. VIII, 3, 41, 46.—1, Dig., 95.

M. Sutputtee v. Indranund Jha; Beng. Rep., 1816, p. 512.

Post, Append. to ch. iv, p. 181.

1, Bombay Rep., p. 426, note.

widowhood, among these people. To resolve this, resort must be had to the works of such, as have had an opportunity of looking into the interior, and detail of Hindu life ; if any there be, whose account of so delicate a subject can be relied upon. Nor is it intended to repress any just indignation, to which that deformity is calculated to give rise, by the recollection, that, however odious, its parallel is found among the most renowned nations of antiquity. A few words will suffice to assimilate the condition of the sex among the old Romans. *Mulieres omnes*, (says Cicero,) *propter infirmitatem consilii, majores in tutorum potestate esse voluerunt* :⁽¹⁾ and Livy, to the like effect, *Nullam nee privatum quidcnrem agere fœminas sine auctore voluerunt ; in manu esse parentum, fratrum, virorum*.⁽²⁾ Whence Plautus, in *Mercator*, Act. iv, Sc. vi.

*Ecce, lege dura vivunt mulieres,
Multoque iniquiore, miseræ, quam viri !*

It was the same before them with the Greek women ; nor can these strictures in this respect be better closed, than by the following extract from a late elegant little work, on the states of Ancient Greece, whose institutions the Romans copied ; exhibiting, with regard to the vassalage of the sex, the substance of many a text of Menu, and yet not a perfect picture of it, as is existed at the time to which the account refers ; omitting, as it does, all allusion to that extraordinary feature, already noticed, the power

(1) Cic. pro Muren., 11.

(2) Liv. xxxiv, 2.

of the husband to dispose of his wife by *will*, to any man whom he might choose for his successor.⁽¹⁾ Speaking of the Athenian women, in an age too of refinement, "They lived (says the learned and ingenious author) in a remote quarter of the house, and were never allowed to mingle in society with the men. They were not permitted to go abroad, without being attended by a slave, who acted as a spy upon their conduct. They were given in marriage without their consent; and were expected to make the care of their families the sole object of their attention. In a funeral oration composed by Plato, in the person of Pericles, he makes that illustrious Statesman exhort the Athenian women, to mind their domestic concerns; and assure them, that they would be most faithful in the discharge of their duty, when they never attracted the notice of their fellow-citizens."⁽²⁾ Thus verifying, perhaps, with reference to distant ages and countries, the complaint of Medea in Euripides.

Γυναικες ἐσμέν ἀθλεώτατον φύσιν;

upon which it may be remarked, that whatever is selfish and illiberal recoils commonly, in a variety of laws, upon these who promote it; and that, in the instance in question, the system adopted, discreditable to man, in proportion as it outrages nature, probably never realized the purpose in view.*

NOTE.—The marriage of widows, is stated, in the text, to be not permitted by Hindu law except in the case of Sudras; (a) but it is

(1) Ante, p. 48.

(2) Hill's Essays on the Institutions, &c., of the States of Ancient Greece, p. 266.

[(a) Ante, pp. 231, 233.]

believed by many Hindus, that this imputed legal incapacity, although in accordance with established custom, is at variance with a true interpretation of the precepts of their religion; and the British legislature have, in accordance with this view, declared that no marriage shall be invalid by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom or any interpretation of the Hindu law to the contrary notwithstanding.^(b) They have moreover secured to her all her former property, rights and privileges,^(c) except such rights and interests that she may have in her deceased husband's property by way of maintenance or by inheritance to her husband or to his lineal successor, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property with no power of alienating the same.^(d)

If the widow be a minor whose marriage has not been consummated, she cannot remarry without the consent of her father, or if she have no father, of her paternal grandfather, or failing such grandfather, of her mother, or failing mother of her elder brother, or failing, also brothers, of her next male relative. If the widow be of full age or one whose marriage has been consummated, her own consent is a sufficient consent to constitute her marriage lawful and valid.^(e) Whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married are sufficient to constitute a valid marriage, have the same effect if spoken, performed or made on the marriage of a Hindu widow; and no marriage is declarable invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.^(f)

In the province of Malabar, there is generally nothing analogous to the state of widowhood as elsewhere existing.^(g) There, among the great body of inhabitants, inheritance vests, as already observed, in the female line, and marriage is limited to the elder brother. Junior brothers consort with females of lower classes, who, on attaining maturity, are allowed to live in a state of concubinage, with whom and with as many as they please, provided the connexion be with members of their own or some higher caste.^(h) Whether, however, they be in alliance with males or not, they reside in their own families.⁽ⁱ⁾

(b) Act XV of 1856, sect. i.

(c) Id., sect. v.

(d) Id., sect. ii.

(e) Id., sect. vii.

(f) Act XV of 1856, sect. vi.

(g) Str. Man. of Hd. law, p. 400.

(h) Id., p. 383.

(i) Str. Man. of Hd. law, p. 400.

CHAPTER XI.

ON THE TESTAMENTARY POWER^(a)

IT having been long since observed by Sir William Jones, and being a thing agreed, that the Hindu law knows no such instrument as a *will*,⁽¹⁾ nor any power in the owner of property so to dispose of it, an apology may be expected for a chapter on the subject. The truth is, that, by the law in question (as under other ancient codes including our own),⁽²⁾ if not previously distributed in his lifetime, property has been left to descend, on the death of its owner, to his heirs. He has not been allowed to designate *who* should enjoy it after him, the law having not only established a course of inheritance, intended to be indefeasible, and which in general is so, but having also made an equitable provision for female issue, and a variety of collateral dependents, where they exist; guarding, at the same time, what it has so ordained, with the most anxious care, by suitable restraints upon alienation. The line of heirs extends, (as has been seen), beyond the relations of the deceased, to connexions and claimants no way allied by blood;—all of whom failing, the doctrine of escheats here, as in other coun-

(1) Note to 2, Dig., 516.

(2) *Hæredes, successorisque sui cuique, liberi; et nullum testamentum.*—Tacit. de Germ., § 20.

[^(a) See note at the end of this chapter in regard to the Decisions of Courts and Legislative enactments, &c., on this subject.]

tries, steps in, vesting in the Sovereign an ultimate right of succession, where no other prescribed one can be shown.⁽¹⁾ This being so, whether the son have, by *nature*, a claim to succeed to his father's property, it becomes immaterial to enquire; sufficient be it, that he has it by *law*. And, if so, it is idle to be considering whether the unqualified concession may not make heirs disobedient, and headstrong, such arguments cutting both ways;—since a contrary doctrine has a like tendency to render parents capricious and arbitrary, to which the Hindu law has shown itself awake, by protesting against the effect of such a partition, by a parent in his lifetime;⁽²⁾ while it has shown its consistency, by proscribing, as incapable of a share, an “enemy to his father.”⁽³⁾ Any apology then for what follows, if required, must be sought for, in the practice that has obtained, among the Hindus at our Presidencies, of indulging in the liberty of *wills*; for which their language has not even a name.^{(4)(a)} That *we* possess it, can be no plea for our sanctioning it in *them*; the less, that, in the extent in which it is allowed to us, it has been disapproved by the author of the Commentaries; who, recognizing the claim of children on the property of their parent, observes, that “it had not been amiss, “if he had been bound to leave them at the least, a “necessary subsistence.”⁽⁵⁾ Such being the indisputable

(1) Ante, ch. VI, p. 138.

(2) Ante, ch IX, pp. 184, 186.

(3) Mit. on Inh., ch. II, sect. x, 3.—Vid. tam. ante, p. 187.

(4) Post, Append. to ch xi, pp. 417, 419, 421, 428, 450.

(5) Blackst. Comm., vol. i, p. 450.—See also vol. ii, p. 373, 12th edit. 8vo.

[(a) The Tamil word for will is மரணத்தொழுக்கம்.—Winstow.]

Hindu law, as in force to the Southward, and the Courts at our Presidencies having been, in all time, in matters of inheritance, sworn to administer justice to the Native according to *his own*; in contradistinction to *ours*, it may be difficult, at this day, to account satisfactorily, and with credit to the first innovators, for the principle upon which, within those limits, so great, and, it may be added, so pernicious an anomaly, as a Hindu *will*, was originally sustained. With respect to Madras, beginning, as it did, in the Mayor's Court, but too much reason exists, for apprehending, that it originated in motives not of the most honorable nature; being a device by means of which *Native* property, to a great amount, became subject at the time, and long after, to European management. So unseemly a period, indeed, has passed away: having been succeeded by a purity, not only in the exercise of government, but in the administration of justice, also, upon which it is consoling to reflect. The practice, however, subsists; and being, with reference to the individuals concerned, essentially vicious, it remains open to examination; and one thing seems plain, that, in affirming it, Courts must have a resting place somewhere. Neither in the English, nor in the Hindu law, can they find any. The latter, as in force to the Southward, repudiates every idea of the kind, in the form and extent to which it has been attempted to carry it; and, for the English, it is excluded by our Charters, wherever *the inheritance of the Native* is concerned. Can then the right of a Hindu, to dispose of his property by will at Madras, be referred to *custom*? *Custom* is a branch of Hindu, as it is of our

own law. "Immemorial custom (says Menu) is transcendant."⁽¹⁾ But how does he define it?—pretty much, as my Lord Coke would define it by "good usages, long established."⁽²⁾ And what are *good usages* for this purpose?—"practices not inconsistent with the legal customs of the country."⁽³⁾ Can the practice in question be considered, for the Hindus, as a *good usage long established*? Originating in corruption, its establishment is as yesterday; and it violates their most important institutions, as well as our own Charters. Should it nevertheless be contended, that, within the limits of the King's Courts at Madras, the Hindu must now acquiesce in the exercise of the power in question, bound by the practice that has obtained, the difficulty will be to define it;—to declare the extent of the obligation, and to settle by what law the details of such power are to be governed.

To suppose, then, the case of a will by a Hindu, setting aside the legal heirs, and every other claimant on the property of the testator, in favor of some artful Brahmin, possessing, and exercising an influence over him, in his dying moments, sufficient to induce him to sign such an instrument, and yet not sufficient, according to the cases, in Westminster Hall, liable to be cited on such an occasion, to warrant the Court in rejecting it. The Hindu law contemplates the possibility of so monstrous an alienation, by deed, to take effect

(1) Menu, ch. 1, p. 108.—Post, Append. to ch. iv, p. 181.

(2) Menu, ch. 1, 110, 118.—Id., ch. VIII, 3, 41, 46.—1, Dig., 95. M. Sutputtee v. Indranund Jha; Beng. Rep., 1816, p. 512.

(3) 1, Dig., 337.

in the lifetime of the maker; denouncing him as insane, and declaring it null upon that ground; like the reasoning of the civil law, in the case of an in-officious testament. As the attempt, therefore, by a Hindu, would be one which his own law, as in force to the Southward, would not tolerate for a moment, the best course would be to set such a will, if offered in judgment, entirely aside; as would probably be done even at Bengal, where the testamentary power is established.⁽¹⁾

But, without going the length of total disherison, an alienation by means of a will may be attempted, far exceeding the legal power of a Hindu testator; and rights may be trenched upon by it, which the Hindu law, as in force to the Southward, has been most anxious to guard. Indeed, it is almost of the essence of a testament that it should be so, more or less; according to an observation, frequently applied to a Hindu will, that if *contrary to Dharma Sastra*, it is invalid;—if in conformity with it, unnecessary.⁽²⁾ Upon this principle, it has been the course of the Southern Pundits, to whom occasionally such wills have been referred, to try them by the provisions of the Hindu law, with respect to *gifts* and *partition during the life of the father*, and to reform them accordingly; it being competent to a Hindu to make a *gift*, to which it will be the duty of his heirs to give effect after his death;⁽³⁾ as it is for him, if he so think proper, to *distribute* his property among them in his lifetime,

(1) 1, Bombay Rep., p. 67.

(2) Post, Append. to ch. xi, p. 421.—E.

(3) Id., Append. to ch. xi, pp. 422, 423, 431, 437, 439.

thereby not defeating, but, on the contrary, affirming, and anticipating their right of inheritance.⁽¹⁾

Should it be proposed, to discontinue the practice of recognizing, in any respect whatever, an instrument purporting to be a will by a Hindu, as being the exercise of a power unknown to their law,—unless executed at least with the formalities of a *deed of gift*, and of course carrying with it the consent of parties interested;⁽²⁾—or otherwise with those of a *partition of heritage*, subject also of course to the rules prescribed for that species of alienation;⁽³⁾—such would undoubtedly be, in a sensible degree, a corrective of the error that has been allowed to take partial roots, liable perhaps to no material objection, other than the opening it would still leave for litigation, to try, upon the principle stated, if the will could, or could not be received; a propensity but too apt to be encouraged, and from which, expensive as its indulgence unavoidably is at our Presidencies, the Hindu has a claim, by all fair means, to be protected.⁽⁴⁾ This will best be done, in the instance in question, by allowing him the benefit of his own law, as reserved to him in our Charters, in the important article of inheritance. But, if the use of wills, so far as they have been improperly permitted, be still to prevail among the Hindus, in the extent to which the practice of allowing them

(1) Ante, ch. ix, p. 166.

Post, Append. to ch. xi, p. 427.—E.

(2) *Snam Sing v. M. Umraotes*; Beng. Rep., 1813, p. 394.

(3) Post, Append. to ch. xi, p. 435.

(4) See a curious passage, expressive of the horror of litigation, in a deed of compromise, between a party (a Hindu) claiming by adoption, and the remote heirs; by which they agreed together to divide the property.—*Sreenarain Rai v. Bha Jha*; Beng. Rep., 1812, p. 340.

exist; (which to the Southward, it is believed, is only within the limits of the King's Courts,) it may be convenient to repeat succinctly the legal grounds, upon which alone they can, with any propriety, be continued and sustained.

In Bengal, Hindu wills seem to derive their support from the two following considerations: 1. Considered as a deed of gift, to take effect at a future time, on the demise of the donor; subject to all rules affecting gifts.⁽¹⁾ 2. That the dominion of the owner over his property is so far absolute, that any exercise of it whatever will be valid and irreversible *in point of law*, how objectionable soever the act, in a *moral point of view*. In the *Nuddeu* case, (to be referred to more particularly in a subsequent page,)⁽²⁾ an authority was cited, (that of *Govindo Nanda*,) reprobating, as absurd, the allowing to be valid, what had been forbidden to be done. The distinction, however, between acts *void*, on the ground of some legal disability in the person of him by whom they are performed, and acts *prohibited* only, on account of their inexpediency, is too firmly rooted in the doctrines of the school alluded to, to be now shaken. But, inasmuch as it is confined to those provinces, and not only not recognized, but disclaimed by the authorities prevailing to the Southward, the ground upon which alone the doctrine of wills can stand there, is very much narrowed. Admit that a Hindu there may do by testament, what he could have done by partition among his sons,

(1) Post, Append. to ch. xi, pp. 422 to 441.

(2) Post, p. 254.

or otherwise by donation ; which is allowing all the force that can be given to such a will, by taking it as a *gift*, in regard to what the testator had power to give, or as a *partition*, in regard to what he might have distributed, but could not have given ; the result would be,⁽¹⁾

1. By way of admission, that a *separated* or sole owner of property, having no male descendants, nor other family, may dispose of it as he pleases.⁽²⁾

2. But that even a *sole* owner, in respect of *land*, whether hereditary or acquired, having a family, cannot, by any act, without their concurrence, deprive his sons of their legal shares, nor the rest of a sufficiency for their maintenance. And that, where there is no land, they must all be provided for, to that extent, out of his personalty.⁽³⁾

3. That, however different in this respect the law may be at Bengal ;⁽⁴⁾—according to the doctrine of the Benares school, as prevalent to the Southward, a member of an undivided family must first obtain *partition*, before he can exercise individual ownership over his right in the joint property, without the consent of his coparceners ; a gift of undivided property, without such consent, being regarded by the Mitacshara⁽⁵⁾ as incompetent ; at least so far as regards the *reality* ; for, as to *moveables*, he appears to be at liberty to make

(1) Ante, p. 5.

(2) Ante, p. 13. Post, Append. to ch. xi, pp. 432, 435.

(3) Mit. on Inh., ch. I, sect. i, 27.

Sham Sing v. M. Umraotee ; Beng. Rep., 1813, p. 395.

Menu, cited in 2, Dig., 112.

Srikrishna, note to Jim. Vah., ch. II, 26.

(4) Rajbhulub B. v. Mt. Buneta De' ; Beng. Rep., ante, 1805, p. 48.

(5) Mit. on Inh., ch. I, sect. i, 30.

gifts on motives of natural affection, but not even with regard to these, to the extent of the whole of his property.⁽¹⁾ Subject to this, the Smṛiti Chandrica declares, that restitution of a *prohibited* gift, as well as of a *void* one, shall be enforced by the Sovereign authority; the property not having been transferred, nor a new right vested. It is to be recollected, however, that separate acquisitions, by a member of an undivided family, so made as to render them exclusive, and impartible, are as much sole property, to all intents and purposes, as though the maker had been, at the time, divided, and separate.⁽²⁾ And that, even with respect to *prohibited* gifts, they “may be valid, “under the exceptions which the law allows; such as “distress, necessary support of the family, and pious “uses, arising from indispensable duties.”⁽³⁾

In Bengal, where the power in question has been long exercised, opinions, carrying with them great weight, have not been wanting, that, supposing it to be *res integra*, not even there, according to the law of the Daya Bhaga of Jimuta Vahana,⁽⁴⁾ (the ground-work of the law of inheritance in that part of India,) could a Hindu, having sons, consistently with it, by any means, and of course not by *will*, (a mode of conveyance alike unknown to that work and to the Mitaeshara,) be permitted to alien his real ancestral estate in land, without their consent. But the contrary having been, over and

(1) Mit. on Inh., ch. I, sect. i, § 27, 30.

(2) Ante, p. 203.

(3) Mit. on Inh., ch. I, sect. i, § 29.

(4) Jim. Vah., ch. II, § 23.

over again, determined, the point there is probably not now admitted to be debatable, whether in the Supreme Court, or in the *Sudder Dewannee Adawlut*.⁽¹⁾ A leading case to this purpose is one decided in the Supreme Court at Calcutta, about the year 1789,⁽²⁾ where the testator, a Hindu, the father of four sons, and possessed of property of both descriptions, a neutral and self-acquired, having provided for his eldest by appointment, and advanced to the three younger ones in his life the means of their establishment, thought proper to leave the whole of what he possessed to his two younger ones, to the disinheritance of the two elder, of whom the second disputed the will; but it was established, on reference to the Pundits of the Court. Their answers were short; simply affirming the validity of the instrument, according to the *Shaster*. Now the *Shaster* knows no such instrument as a will. But, considered as a gift to the two younger sons, in exclusion of the two elder, the ground with the Pundits probably was (the Bengal maxim) that, however inconsistent the act with the ordinary rules of inheritance, and the legal pretensions of the partiticks, yet, *being done*, its validity was unquestionable. Sir Robert Chalmers, and Sir William Jones, being both on the bench at the time, concurred in this determination. About the same time occurred the *Nuddea* case; in appeal from a decree of the inferior Court at Kishnagur, heard and finally determined, in the *Sudder Dewannee Adawlut*, the grand Court of

(1) Post, Append. to ch. xi, p. 431, et seq.

(2) Russichlol Dutt and Hurgaul Dutt, Executors of the will of Modun Mohun Dutt v. Chortanchuru Dutt; Beng. Rep.

Appeal for the whole of the Bengal provinces.⁽¹⁾ It was the case of one of the great Zemindaries, of the country, which the testator, the Raja, having enjoyed during his life under the will of his father, to the exclusion of his three brothers, left by will to his son; against whom one of his uncles instituted a suit for the recovery of his fourth share, disputing the right of the grandfather, so to dispose of property that was ancestral. The question was discussed upon the will of the grandfather of the defendant, which appears to have been an assignment in trust, by way of gift to his eldest son, the elder brother of the plaintiff, in contemplation of death; providing to a certain degree for his other sons, but very inadequately, compared with what they would have been entitled to, had they been allowed to succeed to their legal shares. The latter of the two wills recited that the Zemindary *never had been divided*; but that, pursuant to the custom of the country, it had always been enjoyed by the eldest son;⁽²⁾ in consideration of which the testator had left it to the defendant, being his eldest son, in the presence of the Brahmins of *Nuddea*, whom he had assembled to be witnesses of the gift. Accordingly, the defendant contended, independently of the will, that the estate in question, according to the nature of it, was his, in right of inheritance; and it was proved in the cause, in point of fact, that it had always been enjoyed by one son, in ex-

(1) See a short Note of it in the Beng. Rep., ante, 1805, p. 2, under the name of *Eshandchund Rai v. Eshandchund Rai*.—And see Append. to ch. xi, p. 447.

(2) Ante, pp. 186, 226.

clusion of the rest, though not uniformly by the eldest; but sometimes by the one deemed the fittest to manage a property of that description, pursuant to the spirit of the Hindu law in that respect.⁽¹⁾ The means resorted to by the Court of Appeal, for information as to the law, appears to have been as extensive as possible; references having been made, not only to numerous Pundits named by either party, but to the Pundits of the several Courts in the Provinces, as well as to those at the Presidency; among which latter was Jagannatha Turchapunchanana, the compiler of the Digest. And, though a great majority, including Jagannatha, were in favour of the acts of the two testators, upon the general ground of the competency of a Hindu to dispose of his property as he pleases, without regard to the nature of it, whether ancestral or acquired, public or private, yet the Court, affirming the decree, which had been in favor of the defendant, expressly made the *nature* of the property, and the *course* in which it had always been enjoyed, *according to the custom of the country*, an ingredient in their determination; as may appear from the extract inserted in the Appendix.⁽²⁾ It is to be remarked also in this case, that all the authorities cited and relied upon by the Pundits, in support of the title of the defendant, are, as was naturally to be expected, *Bengal* authorities; among which no mention is made of the Mitacshara, the Smriti Chandrica, or the Madhavya. Another thing to be remarked is, that the Court, not satisfied with the sum spe-

(1) Ante, p. 189.

(2) Post, Append. to ch. xi, p. 447.

cified in the former of the two wills, as a provision for the plaintiff, (being only 250 *rupees* per month,) took upon itself to increase it to 500, upon the ground, as the decree declares, "that the former sum was inadequate to his situation and circumstances." This serves to show that even, in Bengal, under the modern practice, the father of a family, according to his means, cannot leave it inadequately provided for, much less entirely destitute. The *Nuddea* case was followed by others to the same effect ;⁽¹⁾ not, however, altogether without question. Among these may be noticed (in 1807,) that of the *Mullicks*, in the Supreme Court, a case also of importance in point of value, involving the right to above half a million sterling; in which six, out of eight sons, disputed the power of their father to dispose by will, to their prejudice, of such part of it as was ancestral, though they each took by it three *lacks of rupees*; but the Court, without referring to their Pundits, were in that respect unanimous in its favor, considering the point as already settled. In all these cases, however the other members of the family may have been left, the sons of the testator, where there existed any, were, more or less, provided for by him; and, where the provision made by him was deemed inadequate, the Court took upon itself to increase it. These are important facts, though not in favor of the testamentary power, as founded in legal right; and it is to be here remarked, that, where the case was to be governed by the law, as

(1) *Rodhamunee D. v. Shamchundur*; Beng. Rep., ante, 1805.

Rankoomar v. Kishunker; Id., 1805.

Gungarant Bhaduree v. Kasheekaunt; Id., 1813, p. 363.

current in *Mithila*, the contrary of the cases last referred to was determined by the *Sudder Dewanny Adawlut* of Bengal,⁽¹⁾ after consulting their Pundits, who held an attempt to aliene family property as invalid, for want of seisin given in the life of the owner.

At Bombay, and its dependencies, whatever may be its practice, the law is the same as at Madras, and throughout its dependant territories.⁽²⁾ That, at the latter Presidency, it neither knew, nor could endure the power exercised in this way by Hindus, over their property, occurred early, in the discharge of his judicial function, to the author of this work.⁽³⁾ With this impression, the Supreme Court there desisted after a time from granting probates of wills, in the case of *native* estates; the practice of granting which had been established in the Mayor's Court, and followed, during the short period of its existence, in that of the Recorder;—and, at length, in 1812, the question of a Hindu testament (which had been frequently *mooted*) was raised in an equity suit; in which the Bill, founded upon a claim under the will of a Hindu, was dismissed, on the ground of the incompetency of the will, as a mode of conveyance. But, as the property disposed of by it was *undivided* property, a re-hearing was allowed, in order to see whether it might not be sustainable, to the extent of the testator's share, at least with regard to such of it as had been acquired by himself; but the opinion of the Court was not finally

(1) *Sham Sing v. M. Umraotee*; Beng. Rep., 1813, p. 395.

(2) *Post*, Append. to ch. xi, p. 449.

(3) See the case of *Veerapermall P. v. Narrain P.*; *Notes of cases at Madras*, vol. i, p. 78. Ed. 1827.

taken upon this more confined view of the subject;⁽¹⁾ nor did the question again occur, while the author continued to sit upon the Madras bench. Upon that occasion, however, according to his accustomed practice in like cases, he sought in all directions for that information; which, obtained, has enabled him, with proportioned confidence, to compose the present chapter, as well as so much of the first in particular, as regards the right of alienation. For how much of such information he is indebted to Mr. Colebrooke, will be seen in the Appendix. And, if the author shall not, by this work, have redeemed in any degree, the debt which every man is said by my Lord Coke to owe to his profession, he will at least, by the Appendix to it, have conferred upon the public an inestimable obligation, in collecting, and communicating such a body of "Remarks" as it contains, upon the most important points of Hindu law, as connected with the subjects that will have been discussed; the largest proportion of them from the pen of him, whose learning in that abstruse science, drawn directly from original, and the most authentic sources, stands acknowledged in Europe, as well as in India; and which, great as it confessedly is, has, if possible, been surpassed, by the liberality with which it was imparted.⁽²⁾

(1) Post, Append. to ch xi, pp. 435, 441, 452.

(2) Since the publication of the first edition of this work, the Supreme Court at Madras has sustained a will by a Hindu, so far as the property conveyed by it, having been of the testator's acquirement, was bequeathed for the performance of religious ceremonies; considering it, even at that Presidency, to be too late to determine that a Hindu cannot make a will: and holding the one in question not to be liable to be deemed void, on the ground of its being superstitious.—*Ex relatione* Sir Ralph Palmer, ch. I.

[NOTE.—The law relating to testamentary disposition of property

is still in a most unsatisfactory state, no solution of the doubts in which it is involved being afforded by Legislative enactment or the decisions of Courts. "The text books, commentaries and digests of Hindu law," as remarked by Sir C. Scotland in a late case,^(a) "nowhere directly recognize the disposal of property by a will to take effect after death, and its varied rules, as to inheritance and succession to property seem all opposed to the exercise of such right." Still, notwithstanding, it has been the practice of the Courts to recognize the right of a Hindu to make a will, although they limit his power, in regard to the disposition of property, to that which he could have exercised in the case of gift or other alienation during his life: ^(b) they apply, by analogy, what they consider to be the law regulating gifts *inter vivos* to testamentary disposition of property. In a few cases the late Sudder Udalut have regarded wills as documents "incapable of creating a title in a Hindu family,"^(c) Reg. v of 1829, declares wills to have "no legal force whatever except so far as their contents may be in conformity with the provisions of Hindu law;" and the right to make a will is further distinctly recognized by Act XXVII of 1860, Sec. xii and xvii. The question, however, is not whether a Hindu can make a will, but how far he is competent thus to dispose of self-acquired and ancestral property. To remove all uncertainty, the Hon'ble the late V. Sadagopah Charloo, Member of the Madras Legislative Council, introduced a Bill (No. 4 of 1863) for the purpose of conferring on Hindus the power to bequeath property which by law they could dispose of by *deed* during lifetime. The Bill was referred, on the 28th of February 1863, to a Select Committee, with instructions to call for evidence so as to ascertain the wishes of the Hindu community on the subjects embraced by it, and to make their report within nine months. This period has nearly elapsed and no report has been yet submitted.

Under the *Maroomakatayam Law*, which obtains in the Province of Malabar, effect cannot be given to a will; but property in the absolute control of the giver may be alienated by gift, to constitute which, however, possession must have been conferred.^(d)

[(a) *Vallinayagam Pillai v. Pachchi*.—1, Madras High Court Reports, p. 335.]

[(b) I, Select Decrees of Madras Sudder Udalut, pp. 406, 438, and other cases digested in the ADDENDUM to this work.]

[(c) Madras S. U. Dec., 1859, p. 246, and other cases digested in the ADDENDUM.]

[(d) *Id.*, 1856, p. 26.]

CHAPTER XII.

ON CONTRACTS.

HASTENING at length into port, after a sufficiently tedious and perplexed passage, through a sea hitherto but little explored,⁽¹⁾ it is not intended to dwell upon the subject of this, the concluding chapter, beyond what its exigency may seem indispensably to require. Not that it is not, in the circle of civil law, one of the greatest concern. Were it to be asked, what constitutes the subject of *Contracts*? it might with propriety be answered, "*quicquid agunt homines.*" Scarce a day passes with any man, who has anything to do with the business of life, that he is not entering into, executing, or fulfilling one, of some kind or other. Their diversity is infinite; and the objects involved in them often vast, and most important. But, in the first place, they rest, for their formation and solution, upon principles so general, that they have been considered to belong to the law of nature, as manifested in the concurrent practice of civilized nations; and, therefore, in essentials, as common alike among all people. And, secondly, these principles, bottomed in reason and convenience, and inculcating universally the purest good faith, are to be found already so discussed in in-

(1) "The interminable, and troubled ocean (as it has been called) of Hindu law."—Practical Remarks on Principles of Mohammedan law, by W. H. Macnaghten, Esq., p. xx.

numerable treatises, that, excepting with some special view, the field is scarcely open. At the same time, they must be admitted to be a part of the law of nature, that is modified, more or less, everywhere; by local institutions and usage; and the British Charters having, moreover, directed, that as well with regard to matters of CONTRACT, as of INHERITANCE and SUCCESSION, where the question shall be between *Natives*, the *Native law* shall determine,^(a) some attention to the *Hindu law of Contracts* would appear to be of course, in a work professing to embrace the elements of that law generally, with reference to British judicature. Referring, then, in particular, for more systematic views of the subject, to the celebrated treatise of M. Pothier, of Orleans, as translated and edited by a learned jurist, not long since deceased;⁽¹⁾—together with a still later one, so far as it goes, equally comprehensive and more compact, by Mr. Colesbrooke; (of which the introductory matter, with the continuation, remain as *desiderata*,)—it is to be seen, what is proposed to be done here. Of the Digest, of which, in the preceding chapters, such frequent use, has been made, Successions and Contracts, being the professed subjects,—that of Contracts is made to occupy nearly one-half of the whole. But the compiler has included, with a large proportion of irrelevant matter, some, not in general classed under this title; as, for instance, not only *marriage*, but the numerous and various duties to which it gives birth. That marriage is a contract; and that the Courts are bound to administer to parties the law of their faith under this

(1) Mr. (afterwards Sir W.) Evans, late Recorder of Bombay.

[^(a) This applies to the late Supreme Courts of Judicature. In regard to the law administered in the present High Courts and the Mofussil Courts, see note at the end of this Chapter, page 306.]

head, is unquestionable. But the scheme of this work has already included it, with every consideration that it involves, under a different distribution; nor, considering how little it has been admired, it is intended, as to what remains, to follow the arrangement either of the Digest, or of Menu; but to adopt one more consonant perhaps to our own notions; by collecting into one point of view, the most material observations, as applicable to Contracts in general; and then considering the most usual sorts, in the order in which they may naturally present themselves; confining the statement to such points, connected with the subject, as are either *peculiar* to the Hindu law,—or, with regard to which, it may, from their nature, be satisfactory to see, how far it is, with reference to them, *coincident with our own*.

I. *Intention*, and *consent*, being the soul of every agreement, the Hindu law has evinced great care, that the *mind* of the parties shall be in a condition at the time, to be capable of contracting.⁽¹⁾ Hence, the ordinary disqualifications of minority, lunacy, and idiocy, prominent in every code of law, occur in this: in which the competency of the lunatic, during a lucid interval, is admitted.⁽²⁾ With the *insane* person is classed, for this purpose, one intoxicated,⁽³⁾ or incapable through extreme disease;⁽⁴⁾ and the case of minority is construed to comprehend that of decrepit old

(1) Menu, ch. VIII, 168.

(2) Menu, ch. VIII, 163.

Yajnyawalkya, 2, Dig., 193.—2, Bombay Rep., p. 114.

(3) 2, Dig., 193.

(4) Menu, ch. VIII, 163.—2, Dig., 191, 192.

[*(a)* A bond executed by a man in a state of intoxication for the price of articles of clothes, &c., supplied, but of the supply of which there was no proof, was held to be inoperative.—Macpherson on Contracts, p. 9, Ed. 1860.]

age ;⁽¹⁾ the party, in all these cases, being considered to be *non sui juris* ; and, in all of them, the contract, so effected, declared by Menu to be utterly null.⁽²⁾ Upon the same principle, the law watches the influence on the mind of the various passions, by which it is apt to be disturbed ; as of fear, anger, lust, and grief ; holding as not done, anything done by one, while so agitated.⁽³⁾ These disqualifications are chiefly expatiated upon, under the law of *gifts*,⁽⁴⁾ to which the law of *contracts* refers ; the same causes being regarded as productive of the same invalidating effects, in the one case, as in the other.⁽⁵⁾ A distinction, however, is to be attended to between those that operate as a *bar*, such as idiocy, or lunacy ; and those, in which an account may be taken of concurrent circumstances, toward assisting to determine, how far the imputed disability is to be sustained, in order to justify the *nullity* contended for. The case of an agreement, for instance, under the circumstance of inebriation, is one, in which the English and the Hindu law will alike balance, in coming to a conclusion.⁽⁶⁾ And the remark may apply to more of the questionable ones that have been specified ; so as to afford ground to discriminate between contracts, so circumstanced, as not to be capable of standing in-

(1) 2, Dig., 187.

(2) Menu, ch. VIII, 163.

(3) Nareda, 2, Dig., 181, 182.—Yajnyawalkya, 2, Dig., 193.
Catyayana and Vrihaspati.—2, Dig., 197.—Gautama, Id., 200

(4) 2, Dig., 181.

(5) 2, Dig., 328.

(6) 2, Dig., 328.

quiry for a moment, and such as only require to be subjected to a very strict one, before they are allowed. In a system, in which men are protected against their own acts occasioned through *fear*, it follows that *force*, constraining the will, can never be allowed to attain its end; and, in none, is *fraud detected* less permitted to succeed. Nor is advantage to be taken of what was *not seriously meant*. “A true assent (says a learned writer on the universal, including the Hindu law of the subject) implies a serious, and perfectly free use of power, both physical and moral. This essential (he adds) is wanting to promises made in jest, or compliment; or made in earnest, but under mistake; or under deception or delusion; or in consequence of compulsion. Therefore, consent (he concludes) not seriously given, or conceded through error,—extorted by force, or procured through fraud, is unavailable.”⁽¹⁾ And, so well is the whole of this summed up by Jagannatha, according to the express doctrine of the Hindu law, that, not to give, at length, in his own words, the passage alluded to, were an injury to the purpose of the present chapter. Commenting upon a text of Nareda, “where an owner (says he) discriminating what may, and may not be done, and guided solely by his own will, declares, as is actually intended by him, his own property divested, and dominion vested in a person capable of receiving, and designed by the donor, over the thing meant to be given,—such volition vests property in the donee. In cases of fear and compulsion, the man is not

(1) Colebrooke on Obligations, &c., p. 45.

“ guided solely by his own will, but solely by the will
 “ of another. In the case of a man agitated by anger,
 “ or the like, he is not a person who discriminates be-
 “ tween what may, and may not be done. If, terrified
 “ by another, he give his whole estate to any person,
 “ for relieving him from apprehensions, his mind is
 “ not in its natural state;—but, after recovering tran-
 “ quillity, if he give anything in the form of a re-
 “ compensate, the donation is valid. What is given as
 “ a bribe, or in jest, is a mere delivery, or a gift in
 “ words only ; there is no volition, vesting property in
 “ another. As for what is given by mistake, as gold,
 “ instead of silver, which should have been given, or
 “ anything delivered to a Sudra instead of a Brahmin,
 “ the gold and the Sudra are not the *thing* and the
 “ *person* intended, namely, silver and a Brahmin.
 “ Though it be ascertained that ten *suvernas* should be
 “ paid, if anyhow, through inattention or the like,
 “ fifteen *suvernas* be delivered, the gift is not valid ; for
 “ they are not what was really intended to be given.”⁽¹⁾

Not only must the mind of the parties be in a legal
 state to contract, but the subject, or cause of their
 contracting, must be a competent one, according to
 the apprehension of the law. The provision, with
 regard to this, consists principally in *negatives* ; and
 here recourse may be had to what was delivered
 from the Bench, some century ago, by one of
 the Judges of England, in a strain of eloquent
 indignation, worthy at once his seat, and the occa-

(1) 2, Dig., 183.

sion ;—“ This (said he) is a contract to tempt a man to transgress the law ;—to do that which is injurious to the community ; it is void by the common law ; and the reason why the common law says such contracts are void, is, for the public good. You shall not stipulate for iniquity. All writers upon our law agree in this ;—no polluted hand shall touch the pure fountain of justice. *Proculo ! procul este pro-fani !*”(1)—with more to the same effect ; for all which, (noble as it is !) the Hindu, as well as the common law of England, would have supplied him with abundant authorities, had he (the eminent person alluded to) been at the time adjudicating among, and between Hindus.(2) Speaking of a bride,(3) to give evidence, though true, or for subornation,(4) being one instance of the *turpis causa*,)—“ It shall, by no means, be given, (says Catyayana,) though the consideration be performed ; and, he adds, if it had been at first actually given, it shall be restored ;” thinking, it seems, as has been thought by some of our own sages, that it is more consonant to the principles of sound policy, and justice, that, wherever money has been paid on an illegal consideration, it shall be recovered back again, by the party who improperly paid it, than, by denying the remedy, to give effect to the illegal contract.(5)(a) As, whatever is given for an illegal act may be

(1) Post, Append. to ch. XII, p. 454.

(2) Ch. Justice Willes ; in *Collins v. Blantern*, 2, Wils, 347.

(3) 2, Dig., 195.

(4) 2, Dig., 196.

(5) *Lacauzade v. White*, 7, Term Rep., p. 535.

[(a) In dealing with objections to contracts on the ground of maintenance or champerty, the Court must look to the general principles regarding public policy and the administration of justice upon which the law at present rests—*Pitchakutti Chetti v. Kamala Nayakkam*.—I, Mad. High Court Reports, p. 153.]

taken back, so, in the case of a good consideration, if unperformed, the contract fails.⁽¹⁾

To consider next the case of the *wife*, and other dependent members of a man's family, with reference to the power in question of contracting. And, as respects the wife, it may be taken to be commensurate with her right of property, as consisting in her *Stridhana*,⁽²⁾ *land* excepted; the exception applying, in the Bengal Provinces, only to such as may have been given her by her husband, of which she certainly cannot *dispose*, and with regard to which it follows, that she cannot *contract*.⁽³⁾ Beyond this, it is laid down, very generally, in many places, that for *necessaries*, in support of the family, including herself, she may bind her husband by her contracts;⁽⁴⁾ as a man's slave even has power to do, according to Menu.⁽⁵⁾ The case usually put, is that of the *absence of the husband from home*;⁽⁶⁾ when it is but reasonable, that, while it continues, an authority should subsist somewhere, to provide for his family.⁽⁷⁾ It is in the *absence of his master*, that Menu confers this right upon the slave. But, absence, in these texts, is construed to be illustrative only;⁽⁸⁾ and, accordingly, Catyayana extends it to disability in the

(1) Nareda, 2, Dig., 181.—Vrihaspati, Id., 198.

. Menu, ch. VIII, 212, 213.—2, Dig., 172.

(2) 2, Dig., 129, 130.—Ante, p. 14.

(3) Ante, p. 15.

(4) Nareda, 1, Dig., 295.—Vishnu, Id.—Catyayana, Id., 296.

(5) Menu, ch. VIII, 167.—Daya Crama Sangraha, ch. XII, 1.

(6) Catyayana, 1, Dig., 17.

(7) Nareda, 1, Dig., 313.—Post., Append. to ch. XII, p. 458.

(8) 1, Dig., 298, 320.

husband to act, arising from whatever cause ;⁽¹⁾ as, for instance, from incurable disease ;—including, among necessities, for which provision may be made at his expense by others, the nuptials of his daughter, or disbursements for funeral rites.⁽²⁾ And all this (he says) may be done by his servant, his wife, his mother, his pupil, or his son,—*without his assent* ; though, in another text, he supposes his assent to have been given ;—unnecessarily, as the law would imply it.⁽³⁾ but such implication may be rebutted, by proof of his having withheld it, or otherwise ; in which case, there could be no recovery against him, though it should appear that he had left his family destitute.⁽⁴⁾ In certain trades, in which the wife is understood to have a special concern, she has a greater latitude ;⁽⁵⁾ and universally, in proportion as the management of the family is confided to her, he is bound by her contracts.⁽⁶⁾ To what extent and under what circumstances, an undivided family generally is bound by the engagement of any one, particularly of him who is the managing parcener, has already been seen, in treating on coparcenary.⁽⁷⁾

The Hindulaw, in no instance, requires that a contract should be in writing ; though it sets, upon all occasions, a due value upon written evidence.^{(8)(a)} It admits the

(1) 1, Dig., 296.

(2) 1, Dig., 296.

(3) Catyayana, 1, Dig., 17.—Id., 219, 220.

Post, Append. to ch. XII, p. 456. •

(4) 1, Dig., 298, 299.—Post, Append. to ch. XII, p. 460.

(5) Yajnyawalkya, Vrihaspati, Nareda, 1, Dig., 318.

(6) 1, Dig., 318, 319.

(7) Ante, ch. IX, p. 189.

(8) 1, Dig., 19, et seq.—Id., 393, et seq.

[(a) The late Madras Sudder Udalt have generally held, that oral evidence of sale land, (Dec. 1856, p. 150) assignment of a Bond (Id., 1854, p. 40) and perpetual lease (Id., 1859, p. 63) is insufficient : but the High Court has maintained, on the other hand, that an-exchange of lands followed by possession need not be evidenced by writing.—I, M. H. C. Rep., p. 100.]

benefit of one to be assigned according to Jagannatha, and the reason of the thing; though it is remarkable that, under the head of assignment, he cites no authority.⁽¹⁾ And, as an excessive, or illegal gift may be resumed, (the retraction of gifts being an express title of law)^{(a)(2)} so may contracts, be rescinded; the law, in the one case, and in the other, nearly identifying,⁽³⁾ as has been already remarked.⁽⁴⁾

II. Having thus, with reference to Hindu materials, considered the leading points, as regarding contracts generally, particular ones come next to be discussed, under the following heads, viz.: 1. Of *bailment*; 2. Of *loans*; 3. Of *sale or exchange*; 4. Of *debt*.—1. The contract of bailment claims particular attention, from its comprehensiveness, as well as its importance: being, in a simple, and general point of view, a contract only to return in due time what the owner has confided to the bailee, under a responsibility suited to its specific nature; with a view to which a certain degree of care is virtually stipulated; the extent varying with the object of the bailment, and constituting, for the most part, the point to be adjusted in every case, in which a question upon the subject can arise. And, so nice a one is it often, that, from the difficulty of definition, authority has not been wanting for referring it universally to the discretion of the Judge.⁽⁵⁾ The degree depends, in the first instance, upon whether the benefit,

(1) 1, Dig., 00.—Id., 189, et seq.

(2) Menu, ch. VIII, 4, 212, 213.—2, Dig., 170.

(3) 2, Dig., 328.

(4) Ante, p. 7.

(5) Essay on the Law of Bailments, p. 25.

[(a) A complete and unconditional transfer of property in free gift in consideration of affection under a written instrument cannot be revoked by the grantor.—*Sabbapaty Mudali v. Panyandi Mudali*.—Dec. M. S U., p. 858, p. 61.]

resulting from the bailment, be reciprocal between the parties; and, if not, to which of them it attaches; which is, in general, sufficiently obvious. Familiar as the subject must be, in every system of law, provisions regarding it abound in Menu, and other text-writers among the Hindus; and, admitting them (as has been remarked)⁽¹⁾ to be consonant to the principles established elsewhere, on the same subject, the agreement can scarcely be classed with that “*identity* of conclusions, “ which, in proportion as the subject is not of technical “ institution, pure, unbiassed reason, in all ages, and “ nations, seldom fails to draw.”⁽²⁾ With regard to our own juridical system, confessedly the most material, if not the whole of the principles alluded to, have been imported into it, through Bracton, from the Romans. With us, therefore, there has been in this instance, no *such identity of conclusion drawn*; all has been derivation; nor can it be reasonably doubted that, with the Hindu law, have originated (as far as we can see) those provisions, applicable to the subject in question, which the wisdom of “ ages and nations” the most civilized, has since been content to adopt. Of these, the standard, founded in the care that every prudent man takes of his own property,⁽³⁾ remarkable as it is, is as old at least as Vrihaspati; who charges with the value, adding interest, “ the bailee, that suffers a thing bailed to be “ destroyed by his negligence, while he keeps his own “ goods with very different care.”⁽⁴⁾ On the other hand,

(1) Essay on the Law of Bailments, p. 116.

(2) Id., p. 114.

(3) Id., p. 6.

(4) 1, Dig., 429, 411.

“if a thing deposited be lost, together with the goods of the bailee, it is declared by various authorities, to be lost to the *bailor* ;”⁽¹⁾—and numerous texts on the subject of responsibility, contain the equally remarkable exception, (not of inevitable necessity, but, in identical terms,) of “*the act of God, or of the King.*”⁽²⁾

Hindu writers differ in their division of bailments ; some enumerating four ;⁽³⁾ others six ;⁽⁴⁾ Sir William Jones acknowledging only five.⁽⁵⁾ Not to multiply them, (as he says,) inconveniently, by extending enquiry to every possible case, in which a man possesses for a time the goods of another, the most important ones, as they occur in the Hindu law, (from whence, it is plain, they have been derived into other codes), may be distributed, according to the principle that governs their responsibility ; this depends upon the object and benefit involved ; which may be entirely on the side of the *bailor*,—or on that of the *bailee* ; or it may be *mutual*. Thus the *simple deposit*, together with the *commission without reward*, are, for the sake, and enure to the sole advantage, of the *owner* of the thing bailed. In *loans for use*, it is the *bailee*, or borrower, that is alone benefited. In the remaining cases of *mutual trusts*, *pledges*, and the various kinds of *hiring*, both parties have an interest.

(1) 1, Dig., 420, 421.

(2) Nareda, 1, Dig., 420.

Vrihaspati and Catyayana, Id., 421, 423, 427.

Yajnyawalkya, Id., 422, 430.

(3) Yajnyawalkya, 1, Dig., 407.

(4) Nareda, 1, Dig., 408.

(5) Essay on the Law of Bailments, p. 35.

To consider the matter, then, under this triple point of view, beginning with the principle, where the bailment is for the benefit of the bailor, applicable to deposits, and mandates, or commissions without rewards; and, first, of deposits; by which he, who accepts one, is charged with the property of another, without any consideration on the part of the owner; while, on that of the depositary, all is trouble and care. *Subject to any special undertaking*,⁽¹⁾ the law would be unreasonable, that would exact from such a bailee, in point of responsibility, more than the absence of such gross negligence, as must ever be regarded as inconsistent with any kind of engagement. The obligation to restore a deposit, is provided for by *Menu*; who requires that, "as the bailment was, so should be the re-delivery, "according to a rule in the Veda."⁽²⁾ Or, as it is expressed by another authority, "the very thing bailed "must be restored, to the very man who bailed it, in "the very manner in which it was bailed."⁽³⁾ According to which, the defence set up by Demosthenes, for a client of his, sued in an action to recover a deposit, must have prevailed at Benares, as we are told it did at Athens;—the action having been brought by two only, out of three who had been concerned in the bailment, Demosthenes insisted (it seems) *that his client could not legally restore the deposit, unless all three proprietors were ready to receive it.*^{(4)(a)} Not controverting this, nor questioning the precision of Vrihaspati, a deli-

(1) Jagannatha, 2, Dig., 340.

(2) Menu, ch. VIII, 180, 194, 195.—Nareda, 1, Dig., 413.

(3) Vrihaspati, 1, Dig., 415.—2, Id., 139.

(4) Essay on the Law of Bailments, p. 51.

[(a) The restoration of property deposited by one of three brothers with the knowledge of the other two, to any one of the brothers is legal, such deposit not having been by each brother on their separate accounts.—*T. Rungiah and another v. Chenchumma and others*.—I, Dec. M. S. U., p. 484.]

very *substantially* good, would be valid, under a system, that gives effect, upon all occasions, to the *reason* of the law, as opposed to the *letter*, if not carried to excess.⁽¹⁾ Due caution being inculcated in the selection of a depositary,⁽²⁾ a deposit is one of those things, which, bringing with it nothing but responsibility, a prudent man, in the opinion of Vrihaspati, would not receive; but, if he do receive it, he requires him *to keep it with care*, restoring it on a single demand.⁽³⁾ Nor is the Hindu law surpassed by any, in the earnestness with which it exacts from every bailee, together with suitable care, the most perfect fidelity, denouncing as criminal, and punishable accordingly, him, who aliens a deposit without permission, uses it without consent, or neglects to preserve it;⁽⁴⁾—in so much that, as at Rome, so among the Hindus, the violation of one, in some instances, involves infamy.⁽⁵⁾ One criterion, exonerating the bailee, is, if, with the goods bailed to him, his own have been lost; in which case it is held, that the loss is the bailor's, though it should not have happened by any act (as it is called) of God, of the king, or of robbers;⁽⁶⁾ the presumption, in all these cases, being against everything like fault;

(1) 1, Dig., 419.—Vrihaspati, 2, Dig., 128, 153.

Yajnyawalkya, 2, Dig., 570, note.—3, Id., 25, 29.

(2) Menu, ch. VIII, 179.—1, Dig., 411.

Essay on the Law of Bailments, p. 46.

(3) 1, Dig., 416.

(4) Vrihaspati, 1, Dig., 416, 417, 412, 426.

Menu, ch. VIII, 191, 192.—1, Dig., 432, et seq.

(5) Vrihaspati, 4.—1, Dig., 416, 417.

(6) Nareda, 1, Dig., 420.

Vrihaspati and Catyayana, Id., 421.—Yajnyawalkya, Id., 422.
Essay on the Law of Bailments, p. 47.

while the rule is, that he is to make good the deposit, "if in fault, and not unless he be in fault."⁽¹⁾ But, it does not follow, though none of his own property have been lost, that he is to be necessarily answerable, if the deposit, having been kept with care, be lost notwithstanding; unless it can be shown, that he have kept his own with very different care; disregarding the thing deposited, as being another's property, while he secures his own;⁽²⁾ much more, if he have appropriated any part of it.⁽³⁾ And here it may be observed, that, where collusion is not imputable, robbery always by the Hindu law, in opposition to theft, implies a degree of violence, against which no bailee whatever, not specially undertaking, is held to contract; whereas, if a loss happen by thieves, the distinction exists, and a bailee, even without reward, may be chargeable, where such a want of due care can be shown, as must be taken to have led to spoliation, be it of whatever kind.⁽⁴⁾ On the other hand, if the *dépôt* that has been resorted to by the owner of the goods, be confessedly an exposed one, of which he has notice, it is his own fault, if he trust it, and they are lost, or injured, by a peril, to which, in the nature of the thing they would be liable.⁽⁵⁾ In the case of a sealed deposit, the Hindu law accords with what (it seems) was considered to be the better opinion, in the contest that existed on the point, among the

(1) Jagannatha, 1, Dig., 421.—Catyayana, Id., 423.

(2) Vrihaspati, 1, Dig., 429.—Id., 421.

Essay on the Law of Bailments, pp. 47, 67.

(3) Menu, ch. VIII, 189.—1, Dig., 422.

(4) 1, Dig., 423, 429.

(5) Vrihaspati, 1, Dig., 404, 423.—Catyayana, Id., 424.

lawyers of Rome, namely, that the depositary "would only be obliged to restore the casket as it was delivered, without being responsible for the contents;"⁽¹⁾ — Menu having in like manner declared, that, in such case, "the bailee shall incur no censure on the re-delivery, unless he have altered the seal, or taken out something."⁽²⁾ Though inevitable necessity must, in general, excuse, it will not, if the thing, having been previously demanded, was not restored in time; or if it had been used by the bailee, contrary to the faith of the bailment;—in either of which cases, he so far makes it his own, that the loss, if it happen, becomes his, from whatever cause it have proceeded."⁽³⁾ Though the heaviest punishment be denounced against him, who, by false pretences, gets into his hands the goods of another,⁽⁴⁾ yet is such a proceeding justified, in the case of a creditor, who cannot, by ordinary means, obtain payment of his debts;—as is, also, the retaining, under similar circumstances, what has been regularly deposited.⁽⁵⁾ It is called *legal deceit*; available among a people, with whom not *deceit* only, but *force* is allowed to be resorted to, whether for the securing of rights, or the discovery of truth.⁽⁶⁾

Between the *depositary*, and the *mandatary*, or him who, without expectation of reward, engages to execute

(1) Essay on the Law of Bailments, p. 39.

(2) Menu, ch. VIII, p. 188.

(3) Vrihaspati, 1, Dig., 426.—Yajnyawalkya, Id., 430 Nareda, Id., 431.

(4) Menu, ch. VIII, 193.—1, Dig., 433.

(5) Vrihaspati, 1, Dig., 341.

(6) Menu, ch. VIII, 48, 49, 182, 1, Dig., 196, 437.—Vrihaspati, Id., 439, et seq.

for another a commission of any kind, the difference consist in the diligence, added to the care, for which, to a certain extent, the latter is pledged, according to the subject-matter of the mandate ;⁽¹⁾—insomuch that Grotius considers the *deposit* as a division of the *mandate*; “car (to use the words of his French translator) le depositaire *donne ses soins à la garde de la chose déposée entre ses mains ;*”⁽²⁾ as the mandatary gives his, in the execution of what is committed to him. Upon the principles of the Hindu law also, the responsibility is the same, in the one case, as in the other, so far as regards care, with the contingencies to which things so bailed may be liable ; the benefit, in either case, being exclusively his, to whom the article belongs ;⁽³⁾—since, in a system, that mixes continually moral dictate, with legislative enactment, it never could be intended to attach legal effect to the position, that “to him who attends cattle as a favor, even the “favor conferred by him is his hire.”⁽⁴⁾

Should it be objected, as hard, in the case of these two sorts of bailees, *receiving nothing*, that they should be responsible eventually for losses, the answer is, that reasonable care, as well as perfect fidelity, are of the essence of the confidence reposed ; and, as Jagannatha says, the engagement should not be entered into, “by a person not disposed to an act of duty, or amity.”⁽⁵⁾

Vrihaspati (as has been observed) discourages the

(1) Essay on the Law of Bailments, p. 23.

(2) L. 1, ch. XII, § 2, Barbeyrac's edit.

(3) Catyayana, 1, Dig., 405, 406.—Yajnyawalkya, Id., 407.

(4) 2, Dig., 340.

(5) 1, Dig., 417.—Essay on the Law of Bailments, p. 42.

acceptance of a deposit, as unworthy a prudent man.⁽¹⁾ This is not generous. And, unless his employment of it, as a means to *deceive heirs*,⁽²⁾ receive the most favorable construction, such a purpose is far from commendable. But it belongs to the noble office of the Judge, to discountenance and disappoint all covert acts, practised to the prejudice of others' rights; nor can Vrihaspati (though said to have been profoundly versed in the law)⁽³⁾ be ever quoted, with effect, in their support, whether in a Hindu, or in a British Court, administering justice upon Hindu principles; so long as attention shall be paid to the declaration, by the highest Hindu authority, that "when the Judge discovers a fraudulent pledge, or sale;—a fraudulent gift or acceptance; or, in whatever other case he detects fraud, he is to annul the whole transaction."

The next bailment to be considered is that of *loans for use*, in contradistinction to loans of money, or other things, for *consumption*, which are contracts of a different nature; loans for use being for the sole benefit of the bailee, as in those just disposed of, the advantage is entirely on the side of the bailor. Exacting accordingly from the bailee, as the bailment in question does, extraordinary care, he is answerable for slight negligence, though not for inevitable accident or irresistible force. But, if the accident might have been avoided by reasonable care, or the force fairly resisted, the bor-

- (1) 1, Dig., 416.
2, Dig., 404, 413, 419.
- (2) 2, Dig., 139.
- (3) Menu, ch. VIII, 165.

rower must be answerable, if the thing lent to him be lost; much more, if he have exposed it to loss, by his improvidence.⁽¹⁾ So, if it be lost, after the expiration of the period, for which it was borrowed, the loss becomes the borrower's: and he must answer it to the lender with an equivalent, having been *in morâ*, as the Romans called it;—the law of deposits applying, in this respect, *à fortiori*, to loans for use.⁽²⁾ On the other hand, the possession of the borrower is so far commensurate with the object of the loan, that the lender is not to determine it at will, unless some pressing and indispensable purpose of his own would be in danger of failing, if he did not get back, at the moment desired, the thing lent.⁽³⁾ Like all other bailments, the one in question stipulates for the purest good faith; and, therefore, where a special use is in the contemplation of the borrower, at the time of borrowing, as if it were his intention to send the thing borrowed, into another province, he should disclose it, if he wishes to be safe,⁽⁴⁾ the danger to the property lent being eventually increased by such a purpose; as, upon loans for interest, a higher than the legal rate may be exacted, where the borrower is to cross the *Sindhu*, to penetrate dangerous forests, or traverse the ocean:⁽⁵⁾—precautions, that are consistent with a liberal requisition of the law, in the instance in question;—namely, that in “causes concerning a deposit, or a

(1) Nareda, 1, Dig., 420.—Vrihaspati, Id., 429.
Essay on the Law of Bailments, p. 68.

(2) Catyayana, 1, Dig., 436, 437, 446.—Matsya Purana, Id., 445.
2, Dig., 98.—Essay on the Law of Bailments, p. 70.

(3) Catyayana, 1, Dig., 438.—Essay on the Law of Bailments, p. 67.

(4) 1, Dig., 439.

(5) 1, Dig., 46, 72, 80.—Essay on the Law of Bailments, p. 68.

“friendly loan for use, the king is to decide them, “without showing rigour to the depositary;”—against whom, on the contrary, “his honest disposition being “ascertained, the judge is to proceed with mildness.”⁽¹⁾

Having discussed those bailments, where the benefit is all *on one side*, the remaining class is that of those where it is *reciprocal*. Such are *mutual trusts*, *pledges*, and the various kinds of *hiring*; of each of which in their order.

Mutual trusts, as referable to the law of bailments, subsist specifically, where reciprocal deposits, loans, or the like, are made between two or more parties; which, whether they be partners in trade, co-parceners, or persons not otherwise connected than by the transaction in question, it is plain must be governed by the rules that have been, or are yet to be stated; only with a *reciprocal*, instead of a *single* application.⁽²⁾

The law of *pledges* requires a more detailed consideration; the rules concerning them being chiefly deducible from the relative interest resulting from them to the debtor and creditor, as establishing credit on the one hand, and securing payment of a debt on the other. A pledge is an accessory contract, being a bailment of something to the creditor, on a loan of money; which, by the Hindu law, may be for security only, or for security joined with use;⁽³⁾ and, in this respect, it may be compared with the *Vivum vadium*, and the *mortuum vadium*;—the *living*, and the

(1) Menu, ch. VIII, 196, 187.—*Essay on the Law of Bailments*, p. 30.

(2) Nareda, 1, Dig., 408.—*Id.*, 410.—Menu, *Id.*, 415.
Essay on the Law of Bailments, p. 82.

(3) Post, Append. to ch. XII, p. 463.

mort-gage, in ours.⁽¹⁾ But, though this be in general so, and though, to ensure the efficacy of a pledge or mortgage, the Hindu law inculcates the necessity of possession,⁽²⁾ the authorities to this purpose are not applicable to a sort of mortgage, much in use in Hindustan, and the Provinces subject to Bombay, termed *Drishta bandhaca*; by which (according to the usual course of mortgages with us) the pledge is assigned to the creditor as a security without possession, or intention of possession, till the stipulated time arrive;⁽³⁾ so that it may be doubted, whether this mode of pledging be not originally Hindu, instead of Attick, as has been supposed.⁽⁴⁾ In the case of a pledge for use, the debt and interest being extinguished by the use, or otherwise, it reverts to him who made it; on the other hand, any part of the debt remaining, upon expiration of the time for payment, the pledgee, or creditor, may continue to use it, making a demand for payment, and giving notice of his intention to the debtor, or his representative; or, if it be a pledge for *security* only, he may, under the like circumstances, begin to use it, if capable of use, without injury to the substance, giving like notice; while an unjustifiable use of one, being a violation of an implied agreement, works a forfeiture of interest.⁽⁵⁾ In either case, he may, by proper ap-

(1) Post, Append. to ch. XII, pp. 461, 470.

(2) Vyasa and Vrihaspati, 1, Dig., 205.—Post, Append to ch. XII, pp. 465—467.—C. 2, Bombay Rep., p. 130.

(3) Post, Append. to ch. XII, pp. 467, 469.

(4) By Sir William Jones. See Essay on the Law of Bailments, p. 84. Catyayana, 1, Dig., 209, et seq.

(5) Menu, ch. VIII, 144, 150.—Vishnu, 1, Dig., 135, 144.

Yajnyawaleya, Id., 145, 147.—Vrihaspati, Id., 149, et seq.

Vyasa, Id., 186.—Smriti, Id., 197, 198, et seq.—Catyayana, Id., 200.

plication, attach the article, so as to have it sold for his benefit; an account of what is due upon it being previously taken; the excess, if any, upon the sale, to be paid into Court, for the benefit of the owner.⁽¹⁾ And, on this ground it is, that a pledge should, in the judgment of Hindu lawyers, be always taken, where a loan is made to a kinsman, or a friend, against whom compulsory payment cannot be so conveniently enforced.⁽²⁾ So, in the absence of the creditor, and no one on the spot to represent him, the debtor may redeem his pledge, by paying into Court what is due upon it. By usage, contrary perhaps to the strict letter of the law, a pledge is assignable; but the assignment (which can only be for an equal, or less sum, than the sum advanced upon it) should correspond with the original contract; from which any variation might embarrass the redemption, on the part of the owner, by whom it was first pledged.⁽³⁾ But a pledge by the owner, of the same thing, at the same time, to two different persons, for the full value to each, is fraudulent and punishable: and, as between the different pledges, the first hypothecation prevails, subject to priority of possession; or there may be an equitable adjustment of the right, according to circumstances.⁽⁴⁾ As effects bailed cannot be legally aliened by the bailee,⁽⁵⁾ so is the law

(1) 1, Dig., 197 to 202.

(2) Vrihaspati, 2, Dig., 69.—1, Id., 18.

(3) Menu, ch. VIII, 143.—1, Dig., 189 to 192.—Id., 20.

(4) Catyayana, 1, Dig., 209.—Id., 211.—Smriti, Id., 213, et seq. Yajnyawalkya, Id., 476.

(5) Dacsha, 2, Dig., 210.—Id., 152.

justly jealous of such an attempt on the part of the owner of property bailed, while the interest of the bailee in it continues ; as in the case of a pledge. It is agreed, that a purchaser, being privy to the article being in mortgage at the time, the transfer would not avail him. It is farther admitted, that it may be restrained by injunction, upon timely application to the Court ; and the result of a good deal of dubious discussion on the point is, that to render it valid, in favor of the alienee, he should see the thing for which he treats ; and not only have reason to be satisfied, that it is unencumbered, but obtain immediate possession ; from all which it may be collected, that a clandestine disposal by the owner, to a third person, of a thing already pledged to another for an existing debt, (like the case, with us, of a second irregular mortgage,) can scarcely take effect, unless (contrary to the general policy of the Hindu law) the creditor have improvidently allowed the pledge to remain in the hands of his debtor ;⁽¹⁾ conformably with the declaration of Yajnyawalkya, viz., that, in other contested matters, the latest act shall prevail ; but that, in the case of a pledge, a gift, or a sale, the prior contract has the greatest force ;⁽²⁾—as also with the observation of Jagannatha, that, were it otherwise, “no man “ would make a loan, apprehending that the debtor “ would sell to another, what he had already pledged “ ed ;”⁽³⁾—thus distinguishing between a *pledge*, and a *deposit for safe custody* ; which latter, as he remarks,

(1) 2, Dig., 146.

(2) 1, Dig., 476.

(3) 2, Dig., 147.

has little comparative force, and may be at any time recalled by the owner.⁽¹⁾ Prescription runs in other cases; titles being gained by long possession, and lost by silent neglect.⁽²⁾ But his property in a pledge is never lost to the owner, by any lapse of time, while it remains, as such, out of possession;^{(3)(a)} but, on the contrary, it must be faithfully preserved for restitution to him by the creditor; who will be bound to indemnify his debtor, for any damage it may sustain in his hands, through want of due care; the debtor, in the event of loss not attributable to the creditor, being bound to re-place, or make it good: the debt, for which it was given, with the interest running upon it, remaining payable notwithstanding.⁽⁴⁾ A slave being pledged,⁽⁵⁾ the law protects him, in the hands of the pledgee, from insult; and much more from blows, *struck on a sensible part.*⁽⁶⁾

The last bailment, to be considered, as productive of mutual benefit, is that of *hiring*, which is of various sorts, corresponding with others, where the benefit is not mutual, but on one side only. For as there may be a *loan*, so there may be a *hiring for use*; and, as a man may agree to execute a commission gratuitously, so, may

(1) 2, Dig., 147, 148.

(2) Menu, ch. VIII, 147, 148.—1, Dig., 214.
Yajnyawalkya, Id., 135.

(3) Menu, ch. VIII, 145, 149.—Yajnyawalkya, 1, Dig., 185.

(4) See the texts in the Digest, with the commentary upon them,
vol. 1, pp. 144 to 165.

(5) Ante, ch. V, p. 108.

(6) Catyayana, 1, Dig., 153, 159.

Lord Holt, as cited in the Essay on the Law of Bailments, p. 76.

[^(a) All mortgages are ordinarily redeemable after any lapse of time, and it is not requisite that power to redeem should be kept open by specific deed.—*Ramien and another v. Meenatchy Iyer and others.*—Dec. M. S. U., 1856, p. 56.]

the like service be undertaken for a reward, or adequate compensation ; which is always implied in hiring. And, as a commission either to do something about a thing bailed, or simply to deliver it to another, may be without consideration, (*anwañita*),⁽¹⁾ in the same manner, a workman, or artist of any description, may hire out his labour or skill ; or, he may engage himself for pay, as a *common carrier*. So that the main difference between the bailments that have been already discussed, where the consideration is all on one side, and *hiring*, in its various branches, is, that, in the latter, it is *reciprocal* ; the owner of the thing hired, or the hirer of himself, for whatever purpose, being paid, in the one case, for the use of his *property*, —in the other, for that of *himself* ; while he who contracts for the particular thing, or service, derives a correspondent benefit from the temporary use of what he so hires. And, upon this reciprocity turns the responsibility, which the bailment in question stipulates. Such being the general principle, it is to be seen how it is applied in the Hindu law.

“ Wherever (says Jagannatha) the property of one
 “ person is, for some cause, delivered into the hands
 “ of another, for safe custody, the rules declared in re-
 “ gard to *deposits* are to be applied : therefore the law
 “ of bailments (he adds) applies to a carriage, and the
 “ like *received on hire* : and so, in the case of a person
 “ *delivered by the King, or the like, into the hands*

(1) 1. Dig., 405, 407.

“of a guardian;”⁽¹⁾—the meaning of which must be construed to be, that it applies *à fortiori* to the case of hire, which, as it is for the benefit of both parties, cannot but be taken to impose a greater responsibility on the bailee, than where the bailment is altogether for the sake, and on account of him, by whom it is made. Nor is Jagannatha singular in appearing “to make no difference in this respect between a keeper of goods for hire, and a simple depository;” the same generality, on the same occasion, occurring in an author of our own;⁽²⁾ but, that the degree is to be estimated by the peculiar nature of the bailment, is sufficiently plain, from the declaration of Nareda, that “whatever (of things *hired* for a time, at a settled price) be broken or lost, he (the *hirer*) shall make good, except in the case of *inevitable accident, or irresistible force.*”⁽³⁾ It may be here noticed, that, if a man build a house, on ground which he has rented, he has a right, on the expiration of his lease, to take with him the thatch, the wood, and the bricks, of which it is constructed,⁽⁴⁾ contrary to the maxim of the English law, *cujus est solum, ejus est usque ad cælum*; from which, modern decisions, proceeding upon equitable principles, have been gradually departing, in favor of lessees for years.

To proceed to that branch of hiring, which consists in the converting of the material bailed, into an article of use;—India has ever been celebrated for its workers

(1) 1, Dig., 411.

(2) St. Germain, as cited in Essay on the Law of Bailments, p. 97.

(3) Nareda, 2, Dig., 283.

(4) Nareda, 2, Dig., 281, et seq.

in the precious metals, to whom gold or the like being entrusted to make into ornaments, for hire, in proportion to the quality, and the nature of the thing wanted,⁽¹⁾ whether the workman contract for the piece of work, or for time, if he fail in performance, he forfeits his hire, though the work want but little of being completed, or the time of being expired ;⁽²⁾ and, as he is bound to be diligent in the execution of what he has undertaken, so is he answerable for reasonable care ; that is, for any injury to, or loss of, what has been entrusted to him, that can be traced to his fault.⁽³⁾ So, in the case of a common carrier, he is responsible for a loss, not happening by the act of God, or of the king; to which, for anything appearing to the contrary, may be added seizure by robbers, the carrier not having led to it, by any indiscretion of his own, much less by any concurrence on his part, direct or implied ;⁽⁴⁾ in which respect the Hindu differs from other later Codes, particularly from the law of England, which makes the carrier liable for a loss by robbers, under whatever circumstances ; on the ground of *policy*, lest he should combine with them, for the purpose, without the possibility of detection.⁽⁵⁾

Thus has been discussed the comprehensive, and important contract of bailment, under its various aspects, as recognized by the Hindu law ; the bailor in every

(1) 1, Dig. 408.—2, Id., 77.

(2) Menu, ch. VIII, 215, et seq.—*Vṛiddha Menu*, 2, Dig., 275.
Matsya Purana, Id., 276.
 2, Bombay Rep., p. 234.

(3) *Vishnu*, 2, Dig., 271.

(4) *Nareda*, 2, Dig., 272.—*Yajnyawalkya*, Id., 274.
Vṛiddha Menu, Id., 272.—Menu, ch. VIII, 408.

(5) *Essay on the Law of Bailments*, p. 103.

case, retaining, in the thing bailed, a reversionary interest, to take effect, as soon as the purpose of the bailment shall have been answered; the bailee being bound, to preserve with care, greater or less, according to the nature of the bailment, the thing bailed, while his temporary property, or possession of it, continues; as well as to perform about it, with effect, whatever he may have undertaken.

2. The next contract to be considered, according to the order that has been proposed, is that of *loan*, or borrowing, for *consumption*;—whether of money, or other thing, answering the description.⁽¹⁾ It differs from loan for *use*, (which is a bailment,) in that the property of the money, or other thing lent for consumption, vests in the borrower, to be (not returned, but) re-placed by him, with an equivalent;—together with such compensation for the loan, as may have been stipulated. The compensation for the loan of money is *interest*; and for performance of the terms of the contract, on the part of the borrower, it is usual to take *security*, consisting in *pledges*, or *sureties*, or both:—of each of which two subjects, namely, *interest* and *security*, in their order.

Though interest upon loans appears to have been always allowed by the Hindú law, yet, prohibited, as it is, as a means of acquisition to the two higher classes of Brahmin, and Cshatrya, the prejudice that existed against it with the Jews, and among other ancient nations, operated, it is plain, with the Hindu legislator; according to whom, “neither a *priest*, nor

(1) Menu, ch. VIII, 151.—1, Dig., 32.
Harita, 1, Dig., 53.

“a *military* man must receive interest on loans; though each of them (he adds,) may pay the small interest permitted by law; on borrowing for some pious use, to the *sinful* man who demands it.”⁽¹⁾ But, as the Jews, restricted from taking it from one another, were permitted to take it from a stranger,⁽²⁾ so is it expressly allowed to the *mercantile* class, (the *Vaisya*,) as an unexceptionable mode of subsistence.⁽³⁾ Appropriate kinds are specified, varying in number with different authorities, according as it has been contracted for;⁽⁴⁾ which Menu says, ought to be from day to day,⁽⁵⁾ though it is most commonly reserved by the month.⁽⁶⁾ The longer or shorter period, by which interest is reckoned, concerns the option of re-payment, and the avoiding of fractions. A short period being considered to be in the debtor’s favor, the creditor is not to stipulate for reckoning it by a longer one. Whatever may be the rate demandable by the *sinful man*, upon a loan for a *pious use*, it has, in general, ever been high in India, according to the risk run, and in the direct order of the classes; a higher rate being demandable, as the class whether of the borrower or lender is inferior;—the lower the tribe, the higher the interest that may be exacted.⁽⁷⁾ It varies also accord-

(1) Menu, ch. X. 117.—1, Dig., 434.—2, Id., 137.

(2) Deut., ch. XXIII, 20.

(3) Menu, ch. X, 115, 116.—2, Dig., 135, et seq.

(4) Texts and Commentary, 1, Dig., 49 to 51.

(5) Menu, ch. VIII, 151.

Id., adeo argentum ab Danistá.

Apud Thebas sumpsit fœnore.

In dies minasque argenti singulas, nummis.—PLAUTUS.

(6) Jagannatha, 1, Dig., 34.

(7) Menu, ch. VIII, 142.—1, Dig., 45.—Post, Append. to ch. XII, p. 472.—E.

ing to the existence, or non-existence of a pledge.⁽¹⁾ Involved in apparent contradiction, the subject is considered by Jagannatha to be intricate;⁽²⁾ nor has his commentary always the effect of elucidating what is obscure, or disentangling what is perplexed. Though the law has prescribed certain rates, as respectively applicable to the different classes, and serving, as they do, to govern cases, in which interest becomes payable, without previous agreement, it is to be collected, that the rules on the subject leave the parties at liberty to disregard them, substituting other terms, where they think proper.⁽³⁾ Like our own, the Hindu law contemplates cases, where the risk being greater than the specified rate will compensate, a higher may be bargained for, according to the nature of it, whether it be by sea, or by land, answering, in some degree, to our *respondentia*; the consideration, in these cases, being not only the increased risk of non-payment, but the superior profit accruing to the borrower, by the danger to which he and his property are exposed:—in all cases of the sort, the adjustment of the interest is to be settled between the parties, “by men well acquainted with sea voyages, or journies by land;—with times, and with places.”⁽⁴⁾ It has shown the same consideration, where the contract has taken place in a *foreign country*, the rule being, that, however different, the customary

(1) Menu, ch. VIII, 140, et seq.—1, Dig., 29, et seq.

(2) 1, Dig., 53.

(3) Catyayana, 1, Dig., 50.—Id., 70, et seq.

(4) Yajnyawalkya, 1, Dig., 46.—Id., 80.

Menu, ch. VIII, 157.—1, Dig., 48.

rate prevails, and must be paid.⁽¹⁾ Whatever be the rate, or the reservation of it, all authorities seem to be agreed, that interest, while it continues so, cannot bear interest; and that compound interest cannot be contracted for.⁽²⁾ At the same time, the debtor being unable to pay the interest reserved, at the time agreed, nothing exists to hinder the parties from renewing the contract, first coming to an account, and turning the interest due into principal; from which date it will, in effect, carry interest.⁽³⁾ But, it imports the lender not to let interest so run in arrear, as to equal the principal, before coming to such an account; since it is also settled, (as with us,⁽⁴⁾) that it never can be allowed to exceed the principal; but must stop there, as it does upon a tender.⁽⁴⁾ The position, however, is confined, generally, to loans of *money*;—not extending to *grain*, and other things of which loans may be made, not involving the notion of *usury*. Of those, the amount of interest, running on, is not limited to the principal.⁽⁵⁾ On the other hand, many things are enumerated, that, in their nature, bear no interest; as a debt contracted at play; a sum due on account of suretyship; an unliquidated demand, and others; though, upon any of them, it may be reserved by agreement.⁽⁶⁾

To proceed to the subject of *Sureties*, that of *pledges*

- (1) Nareda, 1, Dig., 53.—Id., 83, 86, 88.
- (2) Menu, ch. VIII, 158.—Vrihaspati, 1, Dig., 49.
Nareda, 1, Dig., 50.—Yajnyawalkya, Id., 51.
- (3) Menu, ch. VIII, 154, 155.—1, Dig., 65, 83.—Vrihaspati, 2, Dig., 70.
- (4) Yajnyawalkya and Vishnu, 1, Dig., 133.—Gautama, Id., 138.
Post, Append. to ch. XII, p. 473.
- (5) Menu, ch. VIII, 151, and Texts from lxii to lxx, with the Commentary, 1, Dig., 112 to 123.
- (6) Text lxxi to lxxv, with the Commentary upon them, 1, Dig., 124 to 133.

[(a) The Usury laws have been repealed, as regards India, by Act XXVIII of 1855, and the restriction here referred to is not applicable to bonds, contracts, &c., executed or entered into on and after the 1st of January 1856.]

having been already discussed.⁽¹⁾ In the adoption of sureties, a variety of persons are enumerated, who (it is said) should never be accepted as such. The exceptions involve either some inconsistency with prior engagements, or some incompatibility with subsisting connexion; if not an evident risk of the object failing, from the character, or description of the person proposed, in the event of his being selected, as the intended surety.⁽²⁾ In a system, however, like that of the Hindus, not restricted to positive ordinance, they may be considered perhaps, for the most part, as affording matter of prudential caution, rather than of legal disqualification;—though the rejection of one undivided brother, as a surety for another, respecting a common interest, would indeed be consonant to the strictest law, as has appeared in the chapter on *Parceners*.⁽³⁾ Sureties are for appearance, for the honesty of the debtor, or for payment;⁽⁴⁾ and bail in an action may be taken from the plaintiff, as well as from the defendant. Sureties for *payment* are bound for delivery to the creditor of effects pledged by the debtor;⁽⁵⁾ as suretyship for *appearance*, includes also that for *ordeal*,⁽⁶⁾ (a mode of trial not available in our Courts,) so that, if the debtor, liable to ordeal, be not forthcoming, the surety must pay the debt: and, where it is for appearance generally, the production of the debtor, at the

(1) Ante, p. 280.

(2) *Catyayana*, 1, Dig., 226.

(3) Ante, ch. IX, p. 219.

(4) *Vrihaspati*, 1, Dig., 233.—*Nareda*, Id., 237.
Yajnyawalkya and *Catyayana*, Id., 239.

(5) 1, Dig., 246.

(6) 1, Dig., 240.—Ante, p. 224.

time and place agreed, subject to insuperable impediments, must be *bonâ fide*, so that he may be amenable, if living, to payment; ⁽¹⁾ the law being indulgent with respect to the time allowed for producing him, where he has absconded; as well as, in every case, with respect to the obligation of the surety to pay, where it has become absolute, by the failure of the principal. ⁽²⁾ The surety for *honesty* is answerable, if, by confidence in his representation, the creditor has been misled: ⁽³⁾ involving a question of responsibility, that occupied, not long since, a good deal of attention in Westminster Hall; upon which the opinions of the Judges of England were divided. Between suretyship for payment, and the other two kinds, there is this difference, that, in the two latter cases, the surety dying, and the principal neglecting to pay, the sons of the surety are not answerable, unless their father was himself indemnified; and then the son is liable; as he is, in all cases, subject always to assets, and without interest, where the undertaking was for *payment*. ⁽⁴⁾ Of sureties, jointly bound, each is answerable for his proportion only of the debt to be paid, unless it shall have been otherwise agreed. ⁽⁵⁾ The principal must in all cases, the first sued;—the surety, having paid, has his claim over against his principal, for re-payment; the measure of which varies, according to circumstances,

(1) 1, Dig., 243.—Post, Append. to ch. XII, p. 475.

(2) 1, Dig., 244.

(3) 2, Dig., 235,—1, Bombay Rep., p. 98.

(4) Menu, ch. VIII, 160, 162.—Yajnyawalkya, 1, Dig., 247.

Catayayana, Id., 248, 255.—Post, Append. to ch. XII, p. 476

(5) 1, Dig., 257.

and according to the nature of the commodity, as distinct from money, for the return of which the principal has contracted.⁽¹⁾

In all cases of loans, not only is it urged to take either a pledge, or a surety;⁽²⁾ but the acknowledgment of the surety, and the agreement for the loan, are also recommended to be in writing: of which forms are given in the Digest.⁽³⁾ Good rules! but not indispensable;—since, infringing them, “if (says Jagannatha) a man deliver a loan, without either “pledge or writing, he violates no duty; and the debt “being anyhow proved, the debtor shall be compelled by the King to repay it to his creditor.”⁽⁴⁾ *Trade, and money-lending*, though the proper business of the (*Vaisya* or) *mercantile* class,⁽⁵⁾ are permitted even to the Brahmin and the Cshatrya, if unable to subsist by more appropriate means.⁽⁶⁾

3. The subject of money-lending, or the contract of *borrowing*, having been discussed, the next for consideration is, that of *purchase* and *sale*, or of *exchange*;—barter being, in effect, a sale, and subject to the same rules; the difference consisting only in the distinction between a *price*, which is applicable to a *sale*, and an *equivalent*, which is applicable to *exchange*; as remarked by Jagannatha.⁽⁷⁾

Sale, then, is constituted by payment of the price, and delivery of the article, according to agreement. On

(1) 1, Dig., 258 to 262.

(2) Vrihaspati, 1, Dig., 19.—Nareda, Id., 27.

(3) 1, Dig., 21 to 28.—Id., p. 241.

(4) 1, Dig., 27.

(5) Menu, ch. VIII, 410.—1, Dig., 12.—Ante, p. 4.

(6) Vrihaspati, 1, Dig., 14.—Post, p. 302.

(7) 2, Dig., 338.

goods sold and delivered, but not paid for on demand, interest accrues after six months from the sale; as it does on the price paid, where the article has been "kept back;"⁽¹⁾ unless there have been a special agreement, as to the times of delivery and payment."⁽²⁾ A thing sold, and not delivered, (subject to any special agreement,) is at the risk of the vendor; so that, if, while it remains unduly in his hands, its value sink, he must make it good, with an attention to the eventual profit, where it was purchased for exportation; the same obligation attaching, by whatever means it may be lost.⁽³⁾ Where the price has not been stipulated, the law implies a reasonable one, (*quantum valebat*,) to be settled, in case of dispute, by merchants.⁽⁴⁾ If, instead of paying down the price, *earnest* be paid, and the buyer, afterwards break the agreement, the earnest is forfeited; and, if, in such case, the seller break it, he is liable to repay the earnest two-fold.^{(5)(a)} Where the matter rests on the original agreement, and the vendee, upon its being tendered, refuse to accept the commodity he has bought, there is, with regard to him, an end of the contract; and the owner may dispose of the article as he pleases, the vendee being responsible for any loss, resulting from his not having completed his purchase.⁽⁶⁾ One of the most important considerations in every sale, is the security

(1) Catyayana, 1, Dig., 101.

(2) Nareda, 2, Dig., 319.

(3) Nareda, 2, Dig., 318, 319.—Yajnyawalkya, Id., 319.

(4) Nareda, 2, Dig., 329.

(5) Yajnyawalkya and Vyasa, 2, Dig., 327.—Id., 1, 205.

(6) Nareda, 2, Dig., 327.—Yajnyawalkya, Id., 304.

[^(a) With any damages the purchaser may have sustained.—*Alvar Chetti v. Vaidilinga Chetti*.—I, Madras High Court Reports, p. 9.]

of the vendee, not only as to the right of the vendor to sell, but as to the thing sold proving what it was represented to be, according to the fair understanding of the buyer. And, upon these two points, as upon so many others, relating to contracts, there is a striking analogy between the Hindu law and our own. With regard to the first, the general principle is, that a *sale without ownership* in the vendor, being void, there is no safety for a purchaser but in *market overt*. Market overt, as opposed to all traffic with suspicious characters in secret places, at improper times, or for unfair prices, as circumstances indicating fraud,⁽¹⁾ is, in strictness, that which is carried on before the King's officers; where, by means of a proper entry, the seller may be known, and got at;⁽²⁾—the establishment of *markets* and *fairs*, with the regulations of *weights* and *measures*, as well as the rights of *pre-emption* and *embargo*, having belonged to the prerogative in India, ever since the days of Menu.⁽³⁾ But, it is said, that *market* is mentioned as an instance only; and that the requisition of the law is satisfied, by a purchase made openly in the presence of respectable persons.⁽⁴⁾ The purchase having been so far unexceptionable on the part of the purchaser, it remains for him still, if questioned, to produce the seller, for which time is to be given;⁽⁵⁾ who, being produced, the owner

(1) Yajnyawalkya, 1, Dig., 489.—Vrihaspati, Id., 511.
Nareda, Id., 512.—2, Id., 14.

(2) 1, Dig., 489.—2, Id., 145.

(3) Menu, ch. VIII, 401, 403, 399.

(4) 1, Dig., 489.

(5) Catyayana, 1, Dig., 484.

recovers his property, and the buyer receives back his price.⁽¹⁾ The seller not being to be found, the owner is entitled to get back his property, paying the buyer one-half what he paid for it ; presuming the purchase on his part to have been fair.⁽²⁾ And, if not having been made in market overt, the buyer cannot produce the seller, he is liable to relinquish the goods so bought to the owner, on proof by the latter of his property ;⁽³⁾—a sale under these circumstances being regarded as void. The equity of the Hindu rule, where the loss is divided, consists in the supposition of the owner having been in some fault ; since otherwise, it is imagined, he could not so have lost his property ;—an inference that is made by the law, even where he had been *robbed* of it ;⁽⁴⁾ for which supposed fault, he forfeits half its value, as the price of getting it back, under the special circumstances ; while the purchaser eventually loses half what he gave for it, as a punishment for buying from one, whom he cannot afterwards produce.⁽⁵⁾ Not unlike the regulation, among the ancient Visigoths, noticed by Sir William Jones ; according to which, “ if precious things were deposited, and stolen, time “ was given to search for the thief ; and, if he could “ not be found within the time limited, a *moiety* of the “ value was to be paid by the depositary to the owner,

(1) Menu, ch. VIII, 201, 202.—1, Dig., 502, 487, et seq.
Marichi, 1, Dig., 510.

(2) The same authorities.

(3) Chandeswara, 1, Dig., 484.

(4) 1, Dig., 129, 130.

(5) Vrihaspati, 1, Dig., 509.—Nareda, Id., 505.—Id., 508.
Vishnu, Id., 510.

"*ut damnum ex medio uterque sustineret.*"⁽¹⁾ Such is the difference, by the Hindu law, between a *public* and a *private* sale;⁽²⁾ each implying a warranty, in respect to the title of the vender; as was the case by the civil law, and is by our own.

With respect to the *second* point, regarding the *integrity* of the article purchased, forming one of the eighteen titles of Hindu law, under the head of "*re-scission of purchase and sale*,"⁽³⁾ here also, the law expects that a thing be, what it is represented to be.⁽⁴⁾ But, in general, it is the buyer's own fault, says Jagan-natha, if he examine not the commodity;⁽⁵⁾ and it is his duty, "to know what may be the loss on each article, and what the gain."⁽⁶⁾ Therefore, it is not sufficient, that the price of an article have been high, to subject the seller, on this account, to have it thrown back upon his hands; it must, for this purpose, have been *excessive*.⁽⁷⁾ Of *marketable* things, the prices are, as they may have been settled by authority for the market;⁽⁸⁾ any combination to defeat which is punishable with the highest amercement,⁽⁹⁾—being a thousand *panas*.⁽¹⁰⁾ If the desire to rescind the contract arise from the discovery of a blemish, or defect in the article, *unknown to both parties at the time*, it may be returned,

(1) Essay on the Law of Bailments, p. 113.

(2) 1, Dig., 484.

(3) Menu, ch. VIII, 222.—2, Dig., 307.

(4) Menu, ch. VIII, 203.—1, Dig., 514.—2, Id., 316.

(5) 2, Dig., 321.

(6) Nareda, 2, Dig., 313.

(7) 2, Dig., 312, et seq.

(8) Menu, ch. VIII, 402.—Yajnyawalkya, 2, Dig., 333, et seq.

(9) Yajnyawalkya, 2, Dig., 332, 333.

(10) Menu, ch. VIII, 138.

within the period limited for the purpose; different periods being allowed for examination, or trial, according to its nature, as it is more or less perishable. If fraudulently sold, with a concealed blemish, it may be returned at any time.⁽¹⁾ And fines are declared, against those who falsify, or *cheat* in weights, or measures; who *adulterate* drugs or other things, with improper mixtures, for the purpose of sale; or who *disguise* one thing for another, counterfeiting “the skin of a tiger, “by coloring the skin of a cat; or a ruby, by tinging “a glass bead with another hue;” for which the penalty is eight times the amount of the sale.⁽²⁾

4. The remaining contract, to be adverted to, is that of *debt*, (*Rinadan*,) constituting the first of eighteen titles, enumerated by Menu;⁽³⁾ reserved for mention here the last, as being involved in, and, for the most part, the result of, other contracts already detailed, rather than a substantive and independent one; respecting which, most that occurs among the only authorities referred to, as such, in this work, has been anticipated, either in the preliminary observations upon contracts in general, referring, among other things, to the circumstances, under which particular persons are, or are not, capable of contracting debt,⁽⁴⁾ with the considerations that are excluded, as unlawful;⁽⁵⁾ or in the chapter of “Charges on the Inheritance,” showing,

(1) 2, Dig., 316.—Id., 309, et seq., 314, et seq.

Nareda and Vrihaspati, 2, Dig., 325.

(2) Yajnyawalkya, 2, Dig., 329, et seq.

(3) Menu, ch. VIII, 4, 139.

(4) Ante, p. 268.

(5) Ante, p. 266.

how far the obligation of payment attaches, upon the death of a debtor, on his representative; as also the order in which it is to be made, where there is a deficiency of assets;⁽¹⁾ or, lastly, in discussing the two accessory contracts of pledges,⁽²⁾ and sureties,⁽³⁾ with the subject of interest.⁽⁴⁾ Among the provisions applicable to the subject, is to be noticed the period, within which actions must be brought; being, for the recovery of debt, or other personal matters, ten years.^{(5)(a)} Nor is a suit the only mode of enforcing it; the text of *Ménu*, cited in the *Mitacshara*, authorizing the recovery of a man's property, "by the aid of laws, divine or human; by stratagem; by the practice of *acharitum*; and even by force;"⁽⁶⁾—by *acharitam*, being meant that remarkable one of sitting *dharna* at the door of the debtor, abstaining from food; till, by the fear of the creditor dying at his door, compliance, on the part of the debtor, is exacted;—an alarming species of importunity, prohibited in the Bengal Provinces, by one of the Bengal Regulations; the preamble to which, drawn up by the late Mr. Duncan, while President at Benares, gives an interesting description of this extraordinary proceeding;⁽⁷⁾ existing in practice probably, rather than warranted

(1) Ante, p. 158.

(2) Ante, p. 280.

(3) Ante, p. 291.

(4) Ante, p. 288.

(5) *Vrihaspati*, 1, Dig., 185.—Post, Append. to ch. XII, p. 477.

(6) *Babustah* of Hindu officers; *Reng. Rep.*, 1808, p. 175.—*Duff's Hist. of Mahrattas*, vol. ii, p. 4. Note.—*Bishop Heber's Narrative*, vol. i, p. 433.

Ménu, ch. VIII, 48, 49, 50, 176.—1, Dig., p. 337.—Ante, ch. VI.

(7) *Vrihaspati*, 1, Dig., 339, 354.—*Asiat. Reg.*, vol. iv, p. 333.

[(a) This and similar cases are now governed by the law of Limitations as prescribed in Act XIV of 1859.]

in law ; if it be true, that in a Hindu Court, such a settlement would not be pleadable to an action by the creditor, against the same debtor, for the same cause ; on the ground, that the debtor should have resisted such a mode of enforcing payment, making his creditor amenable for the attempt.⁽¹⁾ In case of a suit, both arrest and bail are competent ; not, however, without consideration of the character of the defendant, as to trustworthiness.⁽²⁾ If, upon the trial, the plaintiff be convicted of having preferred a false claim, or the defendant of having set up a false defence, either party is liable to be amerced, in twice the amount of the sum in dispute, having done it knowingly :⁽³⁾ and, under any circumstances, the parties are subject to a tax, towards defraying the charges of judicature.⁽⁴⁾ The creditor being of equal or superior class with his debtor, an arrangement may be made for working out the debt ;⁽⁵⁾ the work stipulated being consonant to the class of the debtor, and not excessive ; if it be, he will be entitled to his release.⁽⁶⁾ Should he be incapable of labour, time must be given him for payment.⁽⁷⁾ Such is the course, where a defendant has no effects to satisfy a judgment ; in which case, a Brahmin can only be compelled to pay according to

(1) Ellis in MSS. penes me ; and see Menu, ch. VIII, 168.

(2) Catyayana, 1, Dig., 346.

(3) Menu, ch. VIII, 59.—Yajnyawalkya, 1, Dig., 367.
Post, Append. to ch. XII, p. 454.

(4) Yajnyawalkya, 1, Dig., 372.—Vishnu, Id., 374.

(5) Menu, ch. VIII, 177.—Id., IX, 229.

(6) Catyayana, 1, Dig., 352.

(7) Nareda, with the Commentary, 1, Dig., 353.

his income, "by little and little."⁽¹⁾ But, in this, and every case of exemption in favour of the Brahmin, one of the sacerdotal class is intended; all being born capable of that class, but few, comparatively speaking, belonging to it; the rest being secular Brahmins, pursuing various worldly pursuits permitted to them by the law.⁽²⁾ The sacerdotal, learned Brahmin, has indeed various exemptions, extending to capital punishment; but their number has probably, in all time, rendered their claim an evil of no greater importance, than what results in other communities from the tolerance of privileged orders; and certainly not greater than what existed under our own law, while benefit of clergy was in full force.

The above particulars, treated at sufficient length, by Hindu writers, on the title under consideration, it would be impertinent to dwell upon here; the King's Charters, and Company's Regulations, having settled the means, by which matters in dispute between Hindus are to be pursued, in British Courts of justice. For the like reason, the law of *pleading*,⁽³⁾ and of *evidence*, is passed over, though entering (particularly the latter) into Hindu, as well as European treatises, on the subject of contracts. But these parts of their law, also, not having been, by the Royal

(1) Menu, ch. VIII, 177.

Yajnyawalkya, and Commentary, 1, Dig., 351, 365.

Jagannatha, 1, Dig., 354.

(2) Ante, pp. 53, 294.—And see Mr. Rickards, on subject of Castes, with Heber's Narrative, vol. ii, p. 327, 8vo. ed., where the Bishop takes occasion to express the "suspicion he has for some time entertained, that the distinction of Caste, weighs less on the minds of men" (meaning the *Natives*) "than it used to do."

(3) Menu, ch. VIII.—Vyasa, 1, Dig., 369.—Nareda, Id., 370.

Charters, reserved to the Native,⁽¹⁾ sufficient be it to observe, that Hindu pleading was noticed with commendation by Sir William Jones;⁽²⁾ and that, with some trifling exceptions, the Hindu doctrine of evidence is, for the most part, distinguished nearly as much as our own, by the excellent sense that determines the competency, and designates the choice of witnesses, with the manner of examining, and the credit to be given them; as well as by the solemn earnestness, with which the obligation of truth is urged, and inculcated; insomuch that less cannot be said of this part of their law, than that it will be read by every English lawyer with a mixture of admiration and delight, as it may be studied by him to advantage.⁽³⁾ Even the *pious perjury*, which it has been supposed to sanction,⁽⁴⁾ being resolvable, after all, into no greater liberty, than what our juries (not indeed with perfect approbation) have long been allowed to take, where the life of a prisoner, on trial before them, is at stake,—credit is to be given to the pregnant brevity of the Hindu oath, viz., “What he know to have been trans-
“acted in the matter before us, between the parties
“reciprocally, declare at large, and with truth;”⁽⁵⁾ as also to the noble warning, with which the subject, as detailed by Menu, is ushered in, that, “either the Court

(1) See case of *Syed Alley v. Syed Kullee Mulla Khan*, (1813); Notes of cases at Madras, vol. ii, p. 33, ed. 1827.

(2) See preface to 2, Dig., p. xii,

(3) Menu, ch. VIII, from v. 13 to v. 122.

Yajnyawalkya, 1, Dig., 393, et seq.—Post, Append. to ch. XII, from p. 478 to p. 487.

(4) Menu, ch. VIII, v. 103, 104.—Pref. to same, p. xviii.

See Hedaya, vol. ii, b. xxi, p. 666.—Aul. Gell. lib. i, ch. III.

(5) Menu, ch. VIII, 80.

“ must not be entered by Judges, parties, and witnesses, or *law and truth* must be openly declared.”⁽¹⁾ Nor, recurring to the code that has been under consideration, so far as Britain is concerned in administering it, does aught, for the present, appear to remain, but to repeat the hope, that it may adhere to the Policy, which dictated to its legislature the *Acts*, preserving to the Hindus its *essentials* ;—a policy, which it employed the powerful energies of one great man,⁽²⁾ exerted in the service, and for the benefit of his country, anxiously to establish and maintain ; as it did those of a distinguished ornament to his profession, exercising in their behalf, both *on*, and *off* the *seat of justice*, his elegant and varied faculties, to illustrate and promote ;⁽³⁾—a *code*, which liberal minds, making allowance for ancient superstitions, and respecting, with indulgence, primeval usages, will be unwilling to disdain, revered, (as it has been remarked to be,) ⁽⁴⁾ “ as the word “ of the Most High ! ”—just as we, upon evidence deemed by us to be sufficient, believe the Decalogue to have been so delivered, at an early period, to the Jews ; while eminent persons among us have taught, (in common with the Hindus,) that *letters themselves*, so far from being of human invention, were an immediate gift from “ the beneficent Creator.”⁽⁵⁾ For the system in question, we see plainly, that it is too much a mixture of “ despotism and priest-craft,”⁽⁶⁾ to have had the origin ascribed to it.

(1) Menu, ch. VIII, 13.

(2) The late Lord Viscount Melville.

(3) The late Sir William Jones.

(4) Preface to translation of Menu, p. xix.

(5) Menu, cited in 1, Dig., 24.

(6) Preface to translation of Menu, p. xvii.

But let us not, with unbecoming self-sufficiency, be too severe upon human error; unable, as we are, to estimate its source, or judge of its associations. Rather let us, with characteristic generosity, toward a people that deserve well of us, (doing, moreover, by them, as we would be done by,) endeavour to preserve to them, inviolate, at least its most useful portions;—in which hope and confidence, the present essay was begun, and has been finished;—a work, long contemplated, and by many often desired; condensing, with probable, if not with perfect accuracy, within the shortest practicable compass, the principal doctrines of the Hindu law, referable to subjects of special interest, as of the most frequent occurrence;—in the course of which have been adjusted, and applied, the ancient authorities, compared with the opinions of the living; not without attention to the conflicting tenets of different schools; with occasional reference, for the sake of illustration, to other codes, and especially to our own;—the fruit finally, of independent leisure, earned by near twenty years' assiduous administration of justice, among the people whom it concerns. Having accomplished so much, toward rescuing parts of their law from the confusion in which it lies, and the uncertainty that has been thought to characterize it, despondence, as to how the attempt may be received, ought not perhaps to be entertained. At least, a consciousness, as well with regard to the design, as to the care employed in its execution, cannot fail to afford a reward, consonant to such an undertaking, namely, an inward satisfaction, that will, no doubt, be vastly enhanced, should it prove

of the use intended;—thereby virtually contributing to the contentment, and thence to the attachment of our Hindu subjects, *confessedly partial to their own institutions*; and thus warranting its author in ascribing to his connexion with India, in some small degree, the noble self-congratulation, to which the Athenian youth were, with reference to their country, by their early devotions, taught to aspire—τὴν πατρίδα οὐκ ἔλαττω παραδῶσω, πλείω δὲ καὶ ἀρείω.⁽¹⁾

NOTE.—The King's Courts, as stated in the text,^(a) and the Queen's too, were required, by their respective charters, to administer the Hindu law in all matters of contract and dealing between party and party where both parties were Gentoos, but where only one belonged to that class, they were to be guided by the law and usages of the defendant.^(b) This same provision has been extended to the present High Courts so far as regards the exercise of their ordinary civil jurisdiction;^(c) but in their extraordinary and appellate jurisdictions cases arising out of contract are to be determined, as in the late Sudder Udalt, on the principles of justice, equity, and good conscience.^(d) In the same manner are the Courts in the Mofussil to act in cases coming before them for which no specific rule exists.^(e) In practice, the English law, as far as applicable, is adopted by the Courts, but not unfrequently is reference to the Hindu law found necessary and a decision is given in accordance therewith. There is no definite rule as to what matters of contract are to be governed by the Hindu law and what not; but some idea may be obtained of this by reference to the cases digested in the Addendum.

(1) Patriam liberis non relinquam in deteriore, sed potius in meliore, statu. Petit. Leq. Attic., p. 12, 231.

[(a) Ante, p. 262]

[(b) 21 Geo. III, ch. LXX, sect. xvii.]

[(c) Letters Patent, 26th June 1863, para. 18.]

[(d) Id., paras. 19, 20.]

[(e) Reg. III, of 1802, sect. xvii.]

A.

*Account by H. T. Colbrooke, Esq., of the
Hindu Schools of Law.*

(Referred to Ante, Preface, p. x.)

THE laws of the Hindus, civil and religious, are by them believed to be alike founded on revelation, a portion of which has been preserved in the very words revealed, and constitutes the Vedas, esteemed by them as sacred writ. Another portion has been preserved by inspired writers, who had revelation present to their memory, and who have recorded holy precepts, for which a divine sanction is to be presumed. This is termed *Smriti*, recollection, (remembered law,) in contradistinction to *Sruti*, audition, (revealed law.)

The Vedas concern chiefly religion, and contain few passages directly applicable to jurisprudence. The law, civil and criminal, is to be found in the *Smriti*, otherwise termed *Dharma Sastra*, inculcating *duty*, or means of *moral merit*. So much of this, as relates to religious observances, may be classed, together with ancient and modern rituals, (being the designation of *Calpa* or *Paddhati*,) as a separate branch; and forensic law is more particularly understood when the *Dharma Sastra* is treated of.

That law is to be sought primarily in the institutes, or collections (*sanhitas*) attributed to holy sages: the true authors, whoever these were, having affixed to their compositions the names of sacred personages: such as Menu, Yajnyawalkya, Vishnu, Parasâra, Gautama, &c. They are implicitly received by Hindus, as authentic works of those personages. Their number is great: the sages reputed to be the authors being numerous; (according to one list, eighteen; according to another, twice as many; according to a third, many more;) and several works being ascribed to the same author: his greater or less institutes, (*Vrihat*, or *Caghu*,) or a later work of the author, when old, (*Vridhdhu*.)

The written law, whether it be *sruti* or *smriti*, direct revelation, or tradition, is subject to the same rules of interpretation. Those rules are collected in the *Mīmāṃsā*, which is a disquisition on proof and authority of précepts. It is considered as a branch of philosophy; and is properly the logic of the law.

In the eastern part of India, viz., Bengal and Bahar, where the Vedas are less read, and the *Mīmāṃsā* less studied than in the south, the dialectic philosophy, or *Nyaya*, is more consulted, and is there relied on for rules of reasoning and interpretation upon questions of law, as well as upon metaphysical topics.

Hence have arisen two principal sects or schools, which construing the same text variously, deduce upon

some important points of law different inferences from the same maxims of law. They are sub-divided, by farther diversity of doctrine, into several more schools or sects of jurisprudence, which, having adopted for their chief guide a favorite author, have given currency to his doctrine in particular countries, or among distinct Hindu nations : for the whole Hindu people comprise divers tongues ; and the manners and opinions, prevalent among them, differ not less than their language.

The school of Benares, the prevailing one in middle India, is chiefly governed by the authority of the *Mitacshara* of *Vijñaneswara*, a commentary on the institutes of *Yajñyavalkya*. It is implicitly followed in the city and Province of Benares ; so much so, that the ordinary phraseology of references for law opinions of Pundits, from the Native Judges of Courts established there, previous to the institution of Adawlut^s superintended by English Judges and Magistrates, required the Pundit, to whom the reference was addressed, “ to consult the *Mitacshara*,” and report the exposition of the law there found, applicable to the case propounded.

A host of writers might be named, belonging to this school, who expound, illustrate, and defend the *Mitacshara's* interpretation of the law. It may be sufficient to indicate in this place, the *Viramitrodaya* of *Mitra Misra*, and the *Vivada tandava*, and other works of *Camalācara*. They do not, so far as is at present recollected, dissent upon any martial question from their great master.

The *Mitacshara* retains much authority likewise in the south and in the west of India. But to that are added, in the peninsula, the *Smṛiti Chandrica* and other works bearing a similar title, (as *Dattaca Chandrica*, &c.) compiled by *Devana Bhatta*, together with the works of *Madhava Acharya*, and especially the Commentary on *Parasara*, and likewise the writings of *Nunda Pandita*, including his *Vaijayanti*, and *Dattaca Mīmāṃsā*; and also some writers of less note.

In the west of India, and particularly among the Mahrattas, the greatest authority, after the *Mitacshara*, is *Nilacant'ha*, author of the *Vyavahara Mayuc'ha* and of other treatises bearing a similar title.

In the east of India, the *Mitacshara*, though not absolutely discarded, is of less authority, having given place to others, which are there preferably followed. In North Bahár, or *Mithila*, the writings of numerous authors, natives of that province, prevail; and their doctrine, sanctioned by the authority of the paramount Raja of the country, is known as that of the Mithila school. The most conspicuous works are the *Vivada Retnacara*, and other compilations under the superintendence of *Chandeswara*; the *Vivada Chintamani*, with other treatises by *Vachespatis Misra*; and the *Vivada Chandra*, with a few more.

To these are added, in Bengal, the works of *Jimuta Vahana* and those of *Raghunandana*, and several others,

constituting a distinct school of law, which deviates on many questions from that of *Mithila*, and still more from those of Benares, and the *Dekhin*, or southern peninsula.

Note by Mr. Colebrooke.

An anonymous author, in a publication entitled, "Observations upon the Law and Constitution of India,"⁽¹⁾ has adverted to my use of the term *school* in the sense in which it is here employed; and has observed, that I talk "of the Bengal school, and the Benares school holding different laws, as if the question were of taste, or of the fine arts."

I am yet to learn why schools are to be restricted to matters of taste and the fine arts; or why jurisprudence is not to be taught and studied in schools. Nor am I aware that any more appropriate term can be chosen, when speaking of diversity of doctrine, deduced by a varied train of reasoning and interpretation, from the same premises.

I may remark, as I pass, that the anonymous author has misquoted me. I am not "found talking of schools holding different laws," but different *doctrines*, and different *opinions*.

(1) P. 230.

When the author, in the same paragraph, affirmed that "uniformity in the law of succession is generally found in the same state," he had forgotten that the law is not the same in North and South Britain; and perhaps he had never heard of gavel-kind and borough English, nor of customs of the city of London, and of the county of York; much less can he have been apprized, that, but a few years ago, almost every province of France, every *Pays Coutumier* in that kingdom, had peculiar laws in relation to succession.

When he censured the Hindus for want of uniformity in their laws, he overlooked, among his favorite Mahomedans, the discordance of sects, and discrepancy of doctrine.

Can he be ignorant, too, that the Hindu name comprises various nations, differing in language and in manners, as much as the various nations of Christian Europe? It is no more to be wondered, that law should be different in Bengal and Benares, than that it is so in Germany and Spain.

H. T. C.

B.

• BY H. T. COLEBROOKE, ESQ.

*Extracted from Mr. Tucker's Financial Statement,
1824, (p. 238.)*

(Referred to Ante, Preface, p. xiii.)

As very incorrect notions appear to have been entertained concerning the nature of the "*Pancháyeti*," prevailing from ancient times in India, it is expedient to consult the writings of the Hindus themselves, who, in treating of the administration of justice, have occasion to advert to the subject. The following is a brief summary from very ample disquisitions, contained in Treatises of Hindu Law.

An assembly for the administration of justice is of various sorts : either stationary, being held in the town or village ; or moveable, being held in field or forest ; or it is a tribunal, superintended by the Chief Judge appointed by the Sovereign, and intrusted with the Royal Seal, to empower him to summon parties ; or, it is a Court held before the Sovereign in person. The two first of these, are constituted at the request of parties, who solicit cognizance and determination of their differences ; they are not established by operation of law, or by the act of the King, but by voluntary consent. The two last are Courts of Judicature, established by the Sovereign's authority :

such a Court is resorted to for relief, as occasions occur ; and not as the first mentioned, constituted merely for the particular purpose. .

To accommodate or determine a dispute between contending parties ; the heads of the family, or the chiefs of the Society, or the inhabitants of the town or village, select a referee approved by both parties.

Among persons who roam the forest, an assembly for terminating litigation, is to be held in the wilderness ; among those who belong to an army, in the camp ; and among merchants and artizans, in their societies.

Places of resort for redress, are, 1st. The Court of the Sovereign, who is assisted by learned Brahmins, as Assessors. It is ambulatory, being held where the King abides or sojourns.

2nd. The tribunal of the Chief Judge (*"Pradvivaca,"* or, *"Dharmadhyacsha"*) appointed by the Sovereign, and sitting with three or more assessors. This is a stationary Court, being held at an appointed place.

3rd. Inferior Judges, appointed by the Sovereign's authority, for local jurisdictions. From their decisions, an appeal lies to the Court of the Chief Judge, and thence to the Raja, or King, in person.

The gradations in arbitration, are also three.

1st.—Assemblies of townsmen, or meetings of persons belonging to various tribes, and following different professions, but inhabiting the same place.

2nd.—Companies of traders or artisans : conventions of persons belonging to different tribes, but subsisting by the practice of the same profession.

3rd.—Meetings of kinsmen, or assemblages of relations, connected by consanguinity.

The technical terms in the Hindu, for these three gradations of assemblies, are, 1st, *Puga* ; 2nd, *Sréní* ; 3rd, *Cula*.

Their decisions or awards are subject to revision : an unsatisfactory determination of the "*Cula*," or family, is revised by the "*Sréní*," or company, as less liable to suspicion of partiality, than the kindred ; and an unsatisfactory decision of fellow-artizans, is revised by the "*Puga*," or assembly of co-habitants, who are still less to be suspected of partiality. From the award of the "*Puga*," or assembly, an appeal lies, according to institutes of Hindu law, to the tribunal of the "*Prádviváca*," or Judge ; and, finally, to the Court of the *Raja*, or Sovereign Prince.

The "*Puga*," "*Sréní*," and "*Cula*," are different degrees of "*Pancháyeti*," which, as is apparent, is not in the nature either of a jury, or of a rustic tribunal ; but merely a system of arbitration, subordinate to regularly constituted tribunals, or Courts of Justice.

It was not the design of the Bengal regulations to abrogate the "*Panchāyeti*," or to discourage arbitration.

The judicial regulations of 1772, provided that, "in all cases of disputed accounts, &c., it shall be recommended to the parties, to submit the decision of their cause to arbitration; the award of which shall become a decree of the Court. Every encouragement is to be afforded to persons of character and credit, to become arbitrators; but no coercive means to be employed for that purpose."

This provision, in nearly the same words, of which the above is an extract, occurs in the regulations passed in 1780.

It is repeated in the regulations of 1781, with this addition, that "the Judge do recommend, and as far as he can, without compulsion, prevail upon the parties to submit to the arbitration of one person to be mutually agreed upon by the parties; and, with this farther provision, that no award of any arbitrator or arbitrators, be set aside, except on full proof, made by oath, of two credible witnesses, that the arbitrators had been guilty of gross corruption, or partiality, in the cause in which they had made their award."

Here we find the first deviation from the spirit of Hindu arbitration: the regulations of 1781 were drawn up by Sir E. Impey, and that deviation, which was

intended to render arbitration more effectual, has, in its consequences, upset the system. Every dissatisfied party, unable to impeach the award of an arbitrator without proving partiality or corruption, set about calumniating the arbitrator ; and imputed corruption to him simply, that he might obtain a revision of the award, which, in the Hindu system, he might have obtained in regular course of appeal, without any such imputation. As the practice grew, all respectable persons declined references, lest they should be calumniated by the discontented litigant : and “ *Pancháyeti* ” has fallen into disuse.

C.

*Extract from Bombay Reports, vol. i, p. 2, note ;
and vol. ii, pp. 391, 392.*

(Referred to ante, p. lviii.).

PARSEES :—followers of Zooratusht, or Zoroaster, descendants of the ancient Magi of Persia, who emigrated from their own country to India, upwards of 1,000 years ago, when it was overrun by the followers of Mohammed ;—having had before them the alternative of dying by the sword, or of submitting to the religion of the conquerors, by whom their ancient books were destroyed ; so that everything concerning their law, rests now in tradition, and compilations of their learned men, since their arrival in India. On their landing, they entered into a compact with the Hindu ruler, of the town of Sunjum, where they first settled ; by which they bound themselves to an observance of the customs of the Hindus, to the extent that, even in matters connected with the Hindu religion, as adoption, marriage, &c. ; the ceremonies of the two people are the same ; any material difference between them regarding matters of faith and religious worship only, not law.

A D D E N D U M
TO THE FOURTH EDITION.

ABBREVIATIONS USED IN THE ADDENDUM.

- Decs. N. W. P.....Decisions of the Sudder Dewanny Adawlut
of the North-Western Provinces.
- Bellasis.....Reports of Civil Cases in the Sudder Dewanny
Adawlut of Bombay, by A. Bellasis, Esq.
- Borr.....Reports of Cases decided by the Sudder De-
wanny Adawlut of Bombay, by Borrodale.
- Dec. of M. S. U...Decrees in Appeal Suits determined in the
Court of Sudder Udalt, (Madras).
- Fulton.....Fulton's Reports of Cases decided by the
Supreme Court of Calcutta.
- Ind. App.....Moore's Indian Appeal Cases decided by the
Privy Council.
- Mac.Con.Hd.Law.Macnaghten's Considerations on the Hindu
Law as it is current in Bengal.
- M. H. C. Reps.....Reports of Cases decided in the High Court
of Madras, by Whitley Stokes, Esq.
- Mor.....Morton's Decisions of the Supreme Court
at Calcutta.
- M. S. U. Decs... ..Decisions of the Sudder Udalt, (Madras).
- Mor. Dig.....Analytical Digest of all the Reported Cases
decided in the Supreme Courts of Judica-
ture in India, &c., by William H. Morley,
Esq.
- P. C. Cases.....A collection of Printed Cases with the Judga-
ments of the Privy Council appended.
- S. D. A. Rep.....Decisions of the Sudder Dewanny Adawlut
of Calcutta.
- Sel. Reps.....Select Reports of Cases decided in the Sud-
der Dewanny Adawlut, (Bombay).
- Str.....Strange's Reports of Cases decided by the
Supreme Court, Madras.
- Str. M. of H. Law.Manual of Hindu Law, by T. L. Strange, Esq.

ADDENDUM

(To Fourth Edition)*

CONTAINING A DIGEST OF REPORTED CASES ON POINTS
RELATING TO HINDU LAW.

ADOPTION.

(1.) *Right of Adoption as regards Giver and Receiver.*

1. A widow may adopt a son with the consent of her husband or her relatives.—*Ranee Sevagamay Nachair v. Streemathoo Heraniah Gurbah*.—Case No. 18 of 1841.—1 Dec. of M. S. U., 101.—Scott, Greenway and Stratton.

2. The consent of the husband may be given by a writing mentioning the name of the child to be adopted and of its parents, or leaving the child to be afterwards fixed upon.—*Id.*

3. A widow may legally adopt a son without the consent of her husband, if she have obtained permission of the caste and the sanction of the ruling power.—*Sree Brijbhokunjee Muharaj v. Sree Gokoolootsasjee Muharaj*.—5th November 1817.—1, Borr., 181.—Sir E. Nepean, Nightingall and Bell.

4. And having obtained such permission, she must adopt the nearest of kin to her late husband; but if there should be two persons equally near, she may adopt either.—*Id.*

5. A widow is competent to adopt, even without the injunction of her husband, the son of her husband's brother, and he therefore succeeds to the property of her late husband. But she cannot adopt any other but her husband's brother's son during his existence; nor, as it appears, can she adopt any other but such son without the consent of her husband.—*Hulbut Rao Mankur v. Govind Rao Bulwant Rao Mankur*.—1st Sept. 1823.—2, Borr., 75.—Barnard.

6. A female, under the law of *Alya Santan*, cannot adopt if she have male issue living.—*Cotay Hegady v. Manjoo Kumpty and others*.—10th August 1859.—M. S. U. Decs., 1859, p. 138.—Hooper, Strange and Phillips.

7. The second adoption of a son, the first adopted son being alive and retaining the character of a son, is an illegal and void act.^(a)—*Rungama v. Atchama and others*.—29th February 1848.—4, Ind. App., 1.

8. A second adoption being invalid by cause of the existence of the son first adopted, no change of circumstance, such as the demise of the son first adopted, could render the said invalid adoption a valid one.—*Basoo Camumah v. Basoo Chinna Venkataasa*.—13th February 1856.—M. S. U. Dec., 1856, p. 20.—Hooper, Morehead and Strange.

9. A Hindu cannot adopt a son, he having already an adopted son and a son born.—*Yachereddi Chinna Bassapa and others v. Yachereddi Gondappa*.—4th December 1835.—3, P. C. Cases, Case 5.

10. Adoption made during the pregnancy of the wife of the adopter is void, it being of the essence of the power to adopt, that the party adopting should be hopeless of having issue.—*Narayana Reddi and another v. Vedachala*.—8th Aug. 1862.—M. S. U. Dec., 1860, p. 97.—Strange and Beauchamp.

11. One brother cannot give another in adoption, for brothers stand on an equality and one has no right over another this to dispose of him.—*Muttusawmy Naidu v. Luthmeedavunima and others*.—30th August 1852.—*Id.*, 1852, p. 96.—Inglis.

12. A Hindu having properly adopted a son, cannot disinherit him, even for bad behaviour, nor can he adopt another son.—*Dace v. Motee Nuthoo*.—6th October 1813.—1, Borr., 75.—Nepean, Brown and Elphinston.

13. But should a man take another for the purpose of adoption and change his mind before the full performance of the ceremony for adoption, he is at liberty to put him aside and to adopt any other whom he may choose.—*Id.*

14. The legality of an adoption cannot be challenged by one who has consented to it.—*Pillari Chetti Samudrala Naidu v. Rama Lakshmama*.—4th Aug. 1860.—M. S. U. Dec., 1860, p. 91.—Strange and Beauchamp.

15. The Statute of Limitation applies to suits raised to challenge an adoption.—*Chocummal v. Surathy Amay and another*.—22nd April 1854.—*Id.*, 1854, p. 31.—Morehead and Strange.

(a) All the authorities relating to this point are quoted and contrasted in the report of this case by Moore.—*Mor. Dig.*

16. Although a wife may not have obtained her husband's consent during his life to give their child in adoption, she can, after her husband's death and with the concurrence of father, brothers, &c., give her younger son in adoption.—*Arnachellum v. Iyasawmy Pillai*.—Case No. 5 of 1817.—1, Dec. of M. S. U., 154.—Scott, Greenway and Ogilvie.

17. If a man and his wife have agreed in writing to adopt a child and one of them die, the survivor must fulfil the engagement: the agreement is not rendered void by the death of one of the parties.—*Rance Sevagamy Nachiar v. Streemathoo Ileraniak Gurbah*.—Case No. 18 of 1814.—*Id.*, 101.—Scott, Greenway and Stratton.

18. If the husband, at the time of his death, refer to an agreement entered into with his wife to adopt a child, the wife is authorized thereby to adopt the child mentioned in such agreement.—*Id.*

19. Whether the name of a child and of its parents be mentioned in an agreement of adoption in order to identify it, or, to know whose child is referred to, the name of the mother or the tribe from which he is descended be named, the agreement is binding in law.—*Id.*

20. If a Hindu, by will, express a wish to be represented by an unborn son of a particular person, who has but one at the time, and who has no other living at the death of the testator, his widow is not bound to wait indefinitely the birth of a second for the purpose of adoption under her husband's will; but may, without waiting, adopt any competent person she thinks proper.—*Veerapermall Pillai v. Narrain Pillai and others*.—5th August 1801.—1, Str., 91.

(2.) Person to be adopted.

(a) General.

21. The adoption of a married man, though of the Sudra caste, is illegal and void.—*Chetti Colum Prusunnt Vencatachella Reddiar v. Chetti Colum Mudu Vencutachella Reddiar*.—Case No. 7 of 1823.—1, Dec. of M. S. U., 406.—Cochrane and Gowan.

22. An orphan cannot be given in adoption.—*Muthusawmy Naidu v. Lutchmeedavumma and others*.—30th August 1852.—M. S. U. Dec., 1852, p. 96.—Inglis.

23. As a general rule, the adoption of an eldest or only son is an act alien to the principles of Hindu law. Such

adoption however when made by a paternal uncle, but by none other, is sustainable.^(a)—*Permal Naricker and another v. Potteeammaul and others*.—29th Nov. 1851.—M. S. U. Dec., 1851, p. 254.—Hooper and Strange.

24. The adoption of an only son is, when made, valid according to Hindu law.—*Chinna Gaundan v. Kumara Gaundan*.—10th Nov. 1862.—1, M. H. C. Rep., 54.—Scotland and Frere.

25. The adoption of an eldest or only son is improper but not invalid. If a man have two wives, and by the first one son, and by the second several, the elder of those by the younger wife may be given and received in adoption.—*Veerapermall Pillai v. Narrain Pillai*.—5th August 1801.—1, Str., 91.

26. The *Dwyamushyayana* form of adoption is not recognized in the present age.^(b)—*Annamala Auchy v. Mungalum and others*.—23rd March 1859.—M. S. U. Dec., 1859, p. 81.—Hooper, Strange and Phillips.

(b) *Relation.*

27. The adoption of a party by his natural brother is invalid.—*Muthusawmy Naidu v. Lutchmeedarumma*.—30th August 1852.—*Id.*, 1852, p. 96.—Inglis.

29. It is not lawful, and consequently not incumbent on a man, to adopt the only son of his brother in preference to the youngest son of his paternal uncle; but if such adoption take place it is valid.—*Arnachellum Pillai v. Iyasawmy Pillai*.—Case No. 5 of 1817.—1, Dec. of M. S. U., 154.—Scott, Greenway and Ogilvie.

30. Where no legal bar exists to the marriage between the adopter and his adopted son's mother in her maiden state, the adoption of a brother-in-law is not opposed to the principles of Hindu law.—*Kristniengar and others v. Venamamalai Iyengar*.—24th Dec. 1856.—M. S. U. Dec., 1856, p. 213.—Anderson, Goodwyn and Harris.

31. The adoption of a wife's brother is valid.—*Runganaigum and another v. Namasevoya Pillai and others*.—29th April 1857.—*Id.*, 1857, p. 94.—Hooper, Morehead and Goodwyn.

(a) This is an important decision, the question having been gone into by the late Sudder Udawlut for the express purpose of authoritatively deciding it. In a more recent case, pl. 24, the Madras High Court also fully entered into the question, and held that the adoption of an only son is valid.

(b) See pl. 23, 24 and 25.

(c) Age.

32. The age at which a child may be adopted, is not the same in every caste. A child may be adopted from the twelfth day after his birth to the day of the Upanayana or his investiture with the sacred thread worn across the body. The time for performing this ceremony is for Brahmins within their eighth year of age; for Chastriyas within their eleventh; and for Vaidyas within their tenth. Upanayana does not attach to Sudras; and, therefore, the limit for them is the period of marriage or the sixteenth year of their age.—*Rance Sevagamy Nachiar v. Streemathoo Heruniah Gurbah*.—Case No. 18 of 1814.—1, Dec. of M. S. U., 101.—Scott, Greenway and Stratton.

33. The rule which requires Upanayana to be performed among Brahmins within the age of eight years, is merely directory, and the ceremony will not be vitiated though performed at a later period.—*Streenavassien v. Sashyummal*.—16th July 1859.—M. S. U. Decs., 1859, p. 118.—Hooper, Strange and Phillips.

34. The adoption of a Brahmin is valid if made before the Upanayana has been performed, though the boy may have passed the age at which that ceremony ought, according to strict rule, to be accomplished.—*Id.*

35. A similar point is decided in^(a) *Kerutuareen v. Mt. Rhobinersee*.—6th September 1806.—1, S. D. A. Rep., 161.—H. Colebrooke and Fombelle.

(a) A passage cited as an authority of law by the Hindu writers whose works are current in Bengal, expresses that after the fifth year a child should not be adopted by any of the forms of adoption, but that a person desirous of making an adoption should take a child of an age not exceeding five years. On this passage a question arose whether limitation of age was to be understood as positive and constituting an indispensable requisite to the validity of the adoption, or whether it admitted of any latitude of construction. In other provinces and even in Bengal, if adoption be of a near relation on the paternal side, no difficulty would occur, as the adoption of a brother's son or other nearest male relative of the husband would be unquestionably valid at an age much exceeding that specified. But in Bengal, where the adoption of strangers to the family is practised, the settled doctrine is, that the boy's age must be such, that his initiation, the principal ceremony of which is tonsure, may be yet performed in the adopted's family. Admitting, then, the authenticity of the passage and its interpretation (both of which are however contested) the best authorities in Bengal acknowledge the restriction as thus explained and not as confined to the particular age of five years. Accordingly in the case under consideration, the boy not having been previously initiated in his natural father's family, was held by the Court to have been legally adopted.—*Coleb. and see Macn. Cons. Hd. Law*, 141, 192, et seq.—*Mortley's Digest* (old ser.), page, 22, note 9.

(3.) *Form and Mode.*

36. Publicity, if not absolutely essential to the validity of an adoption, is always sought on such occasions.—*Rajah Vassereddi Ramianadha Baulu v. R. V. Jugganadha Baulu*.—4th March 1832.—1, Dec. of M. S. U., 520.—Bird and Huddleston.

37. Neither the assent of the wife of the adopter, nor the invitation and convention of near kinsmen, nor representation to the rajah is indispensable to the validity of the adoption. But the affiliation, as established by the sacrifice, is absolutely essential.—*Alank Manjuri v. Fakir Chand Surkar*.—11th September 1834.—5, S. D. A. Rep., 356.—Robertson.

38. The presence of the natural and adoptive mother is not necessary to give validity to an adoption by Sudras, nor burnt offerings, nor drinking of saffron water by other than the adopting father.—*Alvar Ammaul v. Ramasawmy Naiken*.—6th September 1841.—2, Dec. of M. S. U., 67.—Campbell.

39. In the case of dancing girls, recognition as daughter suffices to constitute adoption without any formal act thereof.—*Vencatachellum v. Venkatasawmy*.—23rd April 1856.—M. S. U., Dec., 1856, p. 65.—Hooper, Anderson and Strange.

(4.) *Effect.*

40. An adopted son forfeits all right of inheritance in his natural family.—*Appaniengar v. Alemalu Ammaul*.—6th January 1858.—M. S. U. Dec., 1858, p. 5.—Hooper, Baynes and Goodwyn.

41. Adoption does not remove the bar of consanguinity operating against the inter-marriage within the prohibited degrees.—*Multia Mudali v. Upon Vencata Charry*.—11th August 1858.—*Id.*, p. 117.—Hooper, Strange and Baynes.

42. The share of an adopted son is one-fourth of the share of a son born to the adoptive father after the adoption.—*Ayyavu Muppowar v. Niladatchi Ammaul and others*.—1st November 1862.—1, M. H. C. Reps., p. 45.—Strange and Frere.

See INHERITANCE.

ALIENATION.

OF ANCESTRAL PROPERTY.—See PROPERTY.

OF PROPERTY BY A HINDU WIDOW.—See WIDOW.

ALLOWANCE.—See MAINTENANCE.

ASSETS.—See DEBTOR AND CREDITOR.

BAILMENT.

1. The restoration of property deposited by one of three brothers with the knowledge of the other two, to any one of the brothers is legal, such deposit having been made for the general interest of the family and not by each brother on his separate account.—*T. Rangiah and another v. Chenchumma and others.*—15th June 1826.—1, Dec. of M. S. U., 482.—Grant, Cochrane and Oliver.

BOND.

1. A bond written in two different hands and not attested by witnesses and the writer, is invalid.—*Vencatu Narnapah Chetti and another v. Vencatu Rama Iyen and others.*—Case No. 11 of 1813.—1, Dec. of M. S. U., 76.—Scott and Greenway.

2. It is equally a law with the Hindus as with other nations, that the formalities attending every contract should be observed throughout, and where a written bond is entered into, written receipts should be taken or endorsements registered on the bond.—*M. R. S. Passaputty Narrainnah v. Passaputty Chinniah.*—Case No. 7 of 1821.—*Id.*, 289.—Harris and Gowan.

3. Payments on a bond can only be proved by written evidence of discharge.—*Iutchumanan Chetti v. Chitambara.*—26th November 1859.—M. S. U. Dec., 1859, p. 253.—Strange, Phillips, and Frere.

4. The terms of a bond cannot be qualified by oral evidence.—*B. Lingappah Chetti v. Parvatammaul.*—17th October 1860.—*Id.*, 1860, p. 211.—Strange and Phillips.

5. Nor can it be varied by such evidence.—*Patta Tripati Ragada v. Uppalapati Jogi Jaganada Rauz and another.*—25th October 1860.—*Id.*, 225.—Strange and Frere.

6. A, a minor, executed a joint bond with his brothers-in-law B and C. A and B lived jointly for several years after the document was written, and then separated. At the time of separation, A was of age, but made no objection to the bond. B afterwards died, and C sued A for the principal and interest due on the bond. Held that A was exempt from all liability and decreed that the amount sued for, together with

the costs, should be recovered from the sale of any estate belonging to B that might be forthcoming.—*Y. Ramaswamy v. G. Lukshmanna*.—2nd July 1849.—M. S. U. Dec., 1849, p. 6.—Thompson and Morehead.

BEQUEST.—See WILL3.

CONTRACT.

1. Possession of the subject of an agreement is not necessary, by the Hindu law as current in Mithila, to give validity to such agreement.—*Sreenarain Rai and another v. Bya Iha*.—27th July 1812.—2, S. D. A. Rep., 23.—Harrington and Stuart.

2. A contract was entered into between two persons for the sale and purchase of a house. The purchaser paid the *Bayarich* or earnest money, and the balance was to be made good on the execution and registry of a final deed of sale within one month from the date of the contract. In the meantime part of the house fell down and the purchaser refused to complete the purchase. It was held, according to the *Vyavashtha* of the law officers, that the contract might be annulled if it so pleased the purchaser, as the buyer's ownership had not commenced, the term not having expired and the price not having been paid, so that the seller's right to the property remained untouched: the earnest however was declared to be forfeited.—*Nursing Bhana v. Senkurdos Mukunddos and another*.—28th March 1815.—1, Borr., 403.—Prendergast, Keate, and Sutherland.

3. In the case of a manufacturer breaking his contract for the supply of a certain article, and the merchant acceding to it by a partial receipt of the article, the Court held (under an award of the trade, contrary to the opinion of the law officers under the Hindu law of contracts) that the manufacturer was liable for damages incurred through his breach of contract by the merchant.—*Brijhookundas Veerchund v. Khandos Behchundos*.—9th January 1823.—2, *Id.*, 234.

4. When a mother hires out her daughter in concubinage, the Civil Courts will not entertain an action for recovery of the wages of her prostitution, notwithstanding the provision of the Hindu law to the contrary.—*Sutao Kusbin v. Hurreeram Bur Ramchunder*.—13th February 1835.—Bellasis 1.—Anderson, Henderson and Greenhill.

5. A purchaser may recover in an action for breach of contract to deliver goods not only double the earnest money, but also damages for non-delivery.—*Alwar Chetti and others v. V. Vaidelinga Chetti*.—12th, 15th, 16th and 17th September 1862.—1, M. H. C. Rep., 9.—Scotland and Bittleston.

DEBTOR AND CREDITOR.

1. The written evidence of debt can only be met by written evidence of discharge.—*Govindu Goundan v. D. Srenevassa Row*.—14th January 1861.—M. S. U. Dec., 1861, p. 6.—Strange and Phillips.

2. The same opinion is held in *Gopala Charlu v. Gan-tappa*.—19th January 1861.—*Id.*, p. 16.—Strange and Frere.

3. A son is liable only to the extent of the property inherited by him from his father.—*Sami Chetti v. Chendroya Chetti*.—10th March 1851.—*Id.*, 1851, p. 13.—Thompson and Morehead.

4. Such liability is not removed by the subsequent loss or destruction of such property.—*K. Lakshmi-pati Sas-trulu v. P. Buchireddi and another*.—18th July 1860.—*Id.*, 1860, p. 78.—Strange and Beauchamp.

5. The sons of a man who had mortgaged his pension for the discharge of a debt contracted by his mother are not, upon their father's demise and upon the pension being continued to them, bound to satisfy their father's obligation.—*Shureef Ahmed v. Kakeer Saib and Pantoo Saib*.—Case No. 4 of 1821.—1, Dec. of M. S. U., 280.—Harris and Græme.

6. A, the husband of B and the father of C, executes a bond: B and C are living away from A with B's parents and are sued for liquidation of the bond. No deed of separation or division of property has taken place. Held that the wife and son are not liable to pay the debt contracted by A during his lifetime.—*Chennapah and another v. P. Chellamah*.—31st March 1851.—M. S. U. Dec., 1851, p. 32.—Thompson and Morehead.

7. A member of one branch of a divided family is not responsible for debts contracted by the members of another branch.—*N. Kadambalitaya v. Royappah Nayaka*.—25th April 1860.—*Id.*, 1860, p. 51.—Hooper and Beauchamp.

8. The share of an individual of a joint family is liable for demands against him.—*Valdyuda Pillai v. Chedumbara Pillai*.—5th December 1855.—M. S. U. Dec., 1855, pp. 234, 236.—Hooper, Morehead and Strange.

9. A son was declared to be liable for certain debts or engagements of his father, among which was that of giving money or agreeing to give money, in consideration of receiving a girl from her family to be married to his son which came under the denomination of *Shulk* and was forbidden by the law.—*Keshow Rao Dirvakur v. Naro Junardhun Patunkar*.—16th March 1822.—2, Borr., 194.—Romer, Sutherland and Ironside.

10. Although it is incumbent upon every Hindu to pay, when he may be able, the debts of his father with interest and those of his grandfather without, even should he not have inherited any assets from them, yet at the same time, it is incumbent upon the creditors, to leave him at liberty until he shall have acquired a sufficient sum for the payment thereof.—*Hurree Kussun v. Runchor*.—25th October 1811.—Sel. Rep., 10.—Crow, Day and Romer.

11. A creditor is bound by the Hindu law first to establish his demand against the original debtor before he can come upon the security for that debtor to pay the debt. And when the appellant claimed against the widow, to enforce payment of a security entered into by her late husband for a third person to the appellant, he was non-suited.—*Bhaee Shah Keshoor v. Rajkoonwur*.—6th November 1812.—1, Borr., 93.—Sir E. Nepean, Brown, Elphinston and Bell.

DEED.

1. A deed of partition is ineffectual, unless it be followed by actual distribution of property.—*Kuppammaul v. Pauchanadaiyan*.—3rd December 1859.—M. S. U. Decs., 1859, p. 260.—Strange, Phillips and Frere.

2. The widow and great nephews, by the mother's side, of a deceased Hindu, having agreed to a certain division of his property, and signed an *Ikhtiyarnameh* to that effect, the widow having previously executed a deed of gift disposing of the whole property; it was held that such *Ikhtiyarnameh* annulled the deed of gift, the latter being the only valid document of the two.—*Mt. Umroot v. Kulyandas*.—5th July 1820.—1, Borr., 284.—Elphinston, Colville, Bell and Prendergast.

3. A *Nujam-potra*, or declaratory deed executed by a Hindu widow, reciting that she had adopted a son under authority from her husband and declaring that the estate was to remain with her during life and to go to the adopted son at her death, is of no avail in law as regards the widow's claim to retain possession; for immediately on the adoption of a son by the widow, under due authority, the estate to which she succeeded in default of male issue, becomes the property of the son adopted.—*Mt. Solukhna v. Ramdolal Parde and others*.—27th May 1811.—1, S. D. A. Rep., 324.—Harrington.

4. But she may hold the estate as trustee for her adopted son and may carry on a suit in her own name for a partition of the property as the guardian of such son, though the property is vested in him.—*Dhurm Das Pandey and others v. Mt. Shama Soondri Dibiah*.—8th Dec. 1843.—3, Ind. App., 229.

5. A sues B for the recovery of certain land alleged to have been purchased by A in B's name. The deeds of sale are in the name of the latter and B leased the land to A's husband on account of rents for some years, but having subsequently failed to do so, A seeks to obtain possession of the land. Held that the deed being in the name of one individual the title could not be recognized in another on the faith of oral evidence that he was the real purchaser, but that there must be documentary evidence to do away with the declared purport of the titled deed by showing the title expressed therein to be merely nominal and that the true owner was some other.^(a)—*Munna Pillai v. Amaravati*.—18th August 1860.—M. S. U. Dec., 1860, p. 98.—Strange and Beauchamp.

6. A deed of purchase, with proof of possession of the property, is preferable by the Hindu law, to a deed of mortgage of prior date, but without possession.—*Gopaul Sudasen v. Dinkur Abbajee*.—6th February 1845.—Bellasis, 58.—Bell, Simson and Brown.

7. The chief anandravan's signature to the instrument of sale is sufficient, but not indispensable evidence of such assent.—*Kaipreta Ramen v. Makkaiyil Mutoren and others*.—13th June 1863.—1, M. H. C. Rep., 359.—Phillips and Holloway.

(a) The decision of the Privy Council in *Gopeekrist Gosain v. Gungapersaud Gosain*, reported in 4, Moore 53, upheld different law from that here enunciated; but to this the Sudder objected that the decision was on an appeal from Bengal, the divergence in practice from the written law in which place and Madras is notoriously considerable. It arises from this, that in Madras the text itself is adhered to, while in Bengal the text is often governed by local usage and expediency.

8. The signature of the kuranavan and the senior anandravan, is *prima facie* evidence of the assent of the family to a sale, and the burden of proving their dissent rests on those who allege it.—*Kondi Menon v. Stranginreatta Ahumanada*.—5th March 1862.—*Id.*, 248.—Frere and Holloway.

GIFT.

1. According to the law of Benares the gift of property to a brother's son is valid notwithstanding the existence of a daughter provided the property be undivided. By Bengal law it would be valid whether the property were divided or undivided.—*Baboo Sheodas Narain v. Kunwul Bas Koonwur*.—5th July 1823.—3, S. D. A. Rep., 234.—Goad and Dorin.

2. Alienation by gift by an undivided member of a Hindu family of his self-acquired property is good in Hindu law.—*Samy Iven v. Iyaven and others*.—22nd August 1855.—M. S. U. Dec., 1855, p. 146.—Hooper, Morehead and Strange.

3. A complete and unconditional transfer of property in free gift, in consideration of affection, under a written instrument cannot be revoked by any subsequent act on the part of the grantor.—*Sabapatty Mudali v. Panyandy Mudali*.—7th April 1858.—*Id.*, 1858, p. 61.—Hooper, Strange and Baynes.

4. A gift to a female, by deed executed by her husband *conjointly* with other joint sharers, cannot be considered as a gift *merely* by the husband, such as to render the property inalienable.—*Taramunee Chowdrain v. Junuvee Dasee*.—24th February 1847.—S. D. A. Rep., 62.—Reid and Jackson. (Dick. dissent.)

5. Property given for the enjoyment of a man and his descendants cannot be alienated. On the extinction of the family of the donee, the property would revert to the donor, the gift being of the character of an inam confined by strict entail. Any sort of alienation of the property would make void the above purpose, and be a transfer of the gift to others whom the donor had no intention to benefit.—*Manikkammal Chitambara Dikshadar and others*.—24th September 1860.—M. S. U. Dec., 1860, p. 173.—Strange and Phillips.

6. The grant of a portion of an estate to an illegitimate son, not exceeding the share given to a legitimate son, is valid.—*Goureevullabha Tavera v. Streemattée Rajah*.—8th November 1849.—*Id.*, 1849, p. 102.—Thompson and Morehead.

7. The alienation in perpetuity of a self-acquired village to one of his nearest male relatives by the owner without his wife's consent is valid, due consideration having been made for his widow.—*R. M. Lutchmiah v. C. V. Jugganaduroydu*.—18th Nov. 1830.—2, Dec. of M. S. U., 12.—Grant, Oliyier and Lushington.

8. A had two sons of his own, viz., B, the Plaintiff's father, and C, who died without heirs; he also adopted another son D, and gave him a quarter share in certain lands. D had no son, but he had two daughters, E and F, the latter married the defendant and died childless before her mother, D's widow. The quarter share at D's death was held by his widow, and thence descended to her surviving daughter, G, who died childless, having previously given the quarter share to the defendant. The plaintiff claimed as the son of D's brother and the legal representative of his grandfather A. Held, that E had full power to bestow the property on the defendant, and that the plaintiff had no claim whatever.—*Bhola Singh v. Girdharee Lall*.—3rd December 1846.—1, Dec. N. W. P., 237.—Cartwright.

9. A adopted a son, B, and executed a deed with B's natural father, by which he undertook to make him heir to his estate and wealth, and subsequently adopted another son C during the lifetime of B. B and C both lived in A's house, who, while they were minors, made a division of his ancestral and other estate between them, in certain proportions: B, when he came, entered into possession of his share; but C being a minor, A managed his share and died during his minority. Held by the Judicial Committee of the Privy Council, that C had no claim to the ancestral estate, his adoption during the lifetime of B being invalid, that A had made a gift, so far as he could, of his property between his two sons, and that therefore effect being given to his intentions of A, so far as he had the power of disposing of his property, by an act of *inter vivos* without B's consent, B was to give up for the benefit of C, the whole property included in the division, to the disposal of which his consent was not necessary.—*Rungama v. Atchama and others*.—29th February 1848.—4, Ind. App., 1.

10. In a suit by a Hindu widow against the brothers of her husband, who died childless, to which the defendants pleaded a conveyance from the brother to them, executed during mortal sickness four days before he died, it was held that

the only question was, whether, in point of fact, he was in sound mind at the time; and the deed was rejected on failure of proof on this point. Judgment in favor of the widow as heir to the estate of her husband revertable at her death to her husband's next heirs.—*Radhamunee Dibeh v. Shamchunder and another*.—27th September 1804.—1, S. D. A. Rep., 85.—H. Colebrooke and Harrington.

11. A Hindu in Benares died, leaving three sons and afterwards the first son died, leaving two widows, and the son of the first son sued the third son for a partition. It appeared that the second son had executed a deed of gift in favor of his widows who had also received written acknowledgments from both the coheirs, which circumstance had been withheld from the knowledge of the Court. Held that though by the law of inheritance, the widows were only entitled to maintenance, under the documents abovementioned they acquired a special right, and their husband's share was accordingly adjudged to them.—*Duljeet Singh v. Sheomunook Singh*.—7th Sept. 1802.—1, S. D. A. Rep., 59.—H. Colebrooke and Harrington.

12. According to the law as current in Bengal, the gift of joint and undivided property to the extent of the donor's share, is valid.—*Kounla Kant Ghosal v. Ram Huree Nund Gramee*.—11th January 1827.—4, *Id.*, 196.—Sealy.

13. Semble, That, granting there be a deed of gift and creditable witnesses, no right can thereby be produced, if seizin of the property have not been given.—*Sham Singh v. Mt. Umraotee*.—28th July 1813.—2, *Id.*, 74.—H. Colebrooke and Stuart.

14. Where a Hindu having no son, executed a deed whereby he granted to his senior widow the whole of his acquired property in the event of no son being born, but in the event of the birth of a son the property was to go to him, and a son was born, but died before his father; it was held that the property in question became under the deed of gift, vested in the son immediately on his birth and on his death reverted to his father as his heir. On the death of the father his widow took a life interest therein without power of alienation.^(a)—*Kishen Govind v. Ladlee Mohun Thakoor*.—30th August 1819.—2, *Id.*, 309.

(a) The respondent appealed from this decision to the King in Council, but having neglected for nearly four years to take any steps towards prosecuting the appeal, it was dismissed on the 21st of August 1823.—*Mor. Dig.*

15. A Hindu of Bengal may lawfully convey all his property, by a deed of gift, to his brother, notwithstanding that he has a wife living.—*Tarnee Churn v. Mt. Dasee Dasea*.—31st July 1824.—3, S. D. A. Rep., 397.—C. Smith and Ahmuty.

16. Semble—According to the law as current in Mithila, a verbal gift of immoveable property is invalid, where the donor has never been in the possession of the property.—*Sham Singh v. Mt. Umraotee*.—28th July 1813.—2, *Id.*, 74.—H. Colebrooke and Stuart.

17. A gift by a widow of personal property left by her husband is valid whether the consent of the heirs be obtained or not, but in the case of real property unencumbered, the gift would be invalid without such consent.—*Cuppa Joseyer v. V. Sashappien*.—18th November 1858.—M. S. U. Dec., 1858, p. 220.—Hooper and Baynes.

* See PROPERTY—WIDOW—WILLS.

GUARDIAN.

1. The mother of an illegitimate child has the natural right to possess and bring up her daughter; but it is quite possible that she should abandon this right to others so as to debar herself from re-asserting it unless for the manifest advantage of the child.—*Mittibhagi and another v. Kottikarati Kakkachi*.—5th September 1860.—M. S. U. Dec., 1860, p. 154.—Strange and Phillips.

2. A step-mother is the legal guardian of her infant step-son, even though the parents of the said infant should have made him over to his paternal uncle.—*Nunkoo Lall v. Mt. Sohodra*.—4th May 1847.—2, Dec., N. W. P., 115.—Lushington.

3. Between the mother and a brother of a minor, the former has the preferable right of guardianship.—*Kulzeep Narain v. Rajbursee Kowur*.—20th Sept. 1847.—7, S. D. A. Rep., 395.—Tucker, Barlow and Hawkins.

4. A minor, on coming of age, is, under the Hindu law, entitled to supersede his half brothers in the guardianship of his uterine minor brothers, although, up to that time, the guardianship of the half brothers is legal.—*Dabee Singh and others v. Bujitt Singh and others*.—19th Sept. 1850.—5, Dec., N. W. P.—Lushington.

INHERITANCE.

I. SERIES OF HEIRS.

1. In cases of inheritance, in order to legalize any deviation from the strict letter of the law, it is necessary that the usage authorizing such deviation should have been prevalent during a long succession of ancestors in the family, when it becomes known by the name of *Kulachqr*, and has the prescriptive force of law.—*Sumrun Singh and others v. Khedun Singh and another*.—27th June 1814.—2, S. D. A. Rep., 116.—Harrington and Fombelle.

2. If one who has been adopted die without issue, the property of the adopted goes to his natural heirs.—*Sabrahmaniya Mudali v. Parvati Ammal*.—10th December 1859.—M. S. U. Dec., 1859, p. 265.—Strange and Phillips.

3. On failure of undivided members, those who are divided may inherit.—*C. Seirvaguren v. Iyah Mudali alias Vidiyalinga Mudali and others*.—9th February 1859.—*Id.*, p. 35.—Hooper, Strange and Phillips.

4. The person introduced into a family as a son obtained by gift being cut off from alliance, under the Hindu law, with his natural kindred, they forfeit all claims to succeed to his estate, which on his demise without issue reverts to the adoptive family.—*T. M. M. Narraina Numboodripad and another v. P. M. Trivicarama Numboodripad*.—11th August 1855.—M. S. U. Dec., 1855, p. 125.—Hooper, Morehead and Strange.

5. The mere fact of a party having lived with a family into which his aunt had married gives him no right to the share of the family property in the absence of any express agreement to that effect.—*Y. Vencata Reddi v. G. Soobha Reddi*.—6th Nov. 1858.—*Id.*, 1858, p. 204.—Hooper, Strange and Baynes.

(1) Sons.^(a)

6. Ancestral property should be apportioned equally amongst all the sons and not according to the number of wives. This rule is applicable to all castes without distinction.—*Poovathay v. Paroomal and another*.—16th January 1856.—M. S. U. Dec., 1856, p. 5.—Hooper, Morehead and Strange.

^(a) Grandsons and great-grandsons participate according to the share of their respective fathers.—*Ante*, p. 197.

7. Except in the case of regalities and certain ancient zemindaries which vest in the eldest son.—*Moottoovengada-chellasawmy Maniagar v. Toombayaswamy Moniagar and others.*—23rd July 1849.—M. S. U. Dec., 1849, p. 127.—Hooper and Phillips.

8. To render an unequal distribution of ancestral property amongst his sons by a father valid, the distribution must be effected during the lifetime of the father, with the consent of the sons and separate and independent possession of their shares must be at once assumed by the several sharers.—*Id.*

9. When two sons of one common ancestor succeed to ancestral property and one of those sons die without male issue, the surviving son and not the deceased widow or daughter is entitled to the succession.—*Serageuna Pungoothy Venkata Letchoomy Naskiar and another v. Aundy Letchoomy Ammaul and others.*—8th Sept. 1825.—1, Dec. of M. S. U., 485.—Grant, Gowan and Lord.

10. The sons of a man who divided his property during his lifetime into three shares, one for each of his sons, and one for himself, his wife and daughter, have no claim to the reserved share upon his death, the widow and daughter surviving him.—*Yejnamoorty Seetaramiah v. Chavaly Lutchmenursoo and another.*—18th May 1831.—2, *Id.*, 16.—Lushington and Bird.

11. A left her property by will to B, eldest son of her second daughter. On his death the property fell to his younger brother C, who died leaving it to D, his foster son. E, the grandson of the eldest daughter of A, subsequently claimed the property. Held, that as the Hindu law does not recognize a 'foster son' it was not legal that C should constitute D as his foster son, and make his will accordingly; nor is it consistent with the shaster that D should perform C's funeral rites: such performance on his part is legally ineffective and cannot entitle him to the property of C, which must go to the latter's *sapinda* kinsmen, &c., who are included in the order of succession to the property of a person who dies leaving no male offspring. E, though the son of A's eldest daughter's son, is not on that score entitled to claim or succeed to the property in dispute.—30th April 1852.—M. S. U. Dec., 1852, p. 61.—Morris and Douglas.

12. According to usage in Malabar, adoption is necessary, among members of the Chetty caste, to constitute the sons of

daughters' lawful heirs on failure of sons.—Case No. 10 of 1817.—Dec. of M. S. U., 157.—Scott, Greenway and Ogilvie.

(2.) *Illegitimate Sons.*

13. The illegitimate sons of a husband succeed to the property of their father to the total exclusion of the legitimate sons of his brother who also was a bastard.—*Chendrabhan v. Chingooran and another.*—30th August 1849.—M. S. U. Dec., 1849, p. 50.—Thompson.

14. The illegitimate son of a Sudra, who died leaving neither son, daughters, nor daughter's son, is entitled to take the heritage, but not if he belonged to one of the superior class.—*Cowareebogee v. Sree Ram Doss.*—Case No. 5 of 1826.—1, Dec. of M. S. U., 546.—Grant, Cochrane and Oliver.

(3.) *Brothers.*

15. The share of a member of an undivided family dying without issue vests in his brother and not in his widow.^(a)—*Laudy Bayummal v. Pegaree alias Ootharam and others.*—14th August 1858.—M. S. U. Dec., 1858, p. 125.—Hooper, Strange and Baynes.

16. Where a person acquires wealth either at home or abroad by his own exertions and dies without separating, his brother inherits the property to the exclusion of the widow and mother.—*Man Bae v. Krishnee Bae.*—31st October 1821.—2, Borr., 104.—Sutherland and Ironside.

(4.) *Widows.*

17. A widow, whether childless or not, stands next in the order of succession on the failure of male issue. Where A had two wives B and C, and B pre-deceased A leaving three daughters, and C survived A and was childless. Held that C succeeds to A's property in preference to the three daughters.—*Perammal v. Venkatammal.*—21st February 1863.—1, M. H. C. Rep., 223.—Strange and Holloway.

18. The landed estate of a man dying without male issue or undivided cousins (Dagadis) descends to his widow, who, however, being little more than a tenant for life and trustee for the ulterior heirs, cannot, without their consent, alienate the property, of which a small portion may be sold without such consent in the event of its being for the purpose of discharging the debts of her husband or for the benefit of

(a) The parties in the case were the illegitimate sons of a European by a Hindu, who adhered to the religious persuasion of their mother and lived in a state of union.

his soul or for her own subsistence in a season of scarcity.—*Paroomayee v. Ramachendren and another*.—8th January 1857.—M. S. U. Dec., 1857, p. 1.—Goodwyn and Harris.

19. Widows, however, with issue (daughters) take the real property in equal proportions to the exclusion of those without issue. The personal property all share alike.—Str. M. of H. L., para. 327.

20. The eldest widow succeeds to her husband's estate in preference to the other widows, who during her lifetime are entitled to maintenance only. The second widow is entitled to succeed on the death of the first.—*Sree Vutsavoy Jugganada Rauze v. Sree Vutsavoy Booshee Seetiah*.—Case No. 5 of 1824.—1, Dec. of M. S. U., 453.—Ogilvie, Cochrane and Oliver.—See also *Seenevullala Soondamany Tudya Talavu v. Tungamma Nauchear*.—14th August 1837.—2, *Id.*, 40.—Bird and Campbell.(a)

21. A widow is not competent to claim a share of undivided ancestral property, nor can she be considered as a coparcener of the estate. If ancestral property of an undivided family has descended to an adopted son, he becomes the owner of it, and on his death his widow succeeds to it to the exclusion of the widow of his adoptive father.—*Vencata Soobummal v. Venkummal*.—Case No. 12 of 1818.—1, *Id.*, 210.—Scott and Greenlaw.

22. The widow of an undivided brother has no right to her husband's property which goes in preference to his brother.—*Rungama v. Atchumma and others*.—4th March 1832.—2, *Id.*, 521.—Bird and Huddleston.

(5.) Daughters.

23. Daughters should only succeed on failure of widows. Where A had two wives, B & C, and B pre-deceased A leaving three daughters, and C who survived A was childless. Held that C succeeds to A's property in preference to the three daughters.—*Perammal v. Vencatummal*.—21st February 1863.—1, M. H. C. Rep., p. 223.—Strange and Holloway.

(6.) Sisters.

24. A sister as among the heirs taking under the Hindu law is not recognized.—*Kasale Arumugum v. Palaniayi and another*.—19th Nov. 1859.—M. S. U. Dec., 1859, p. 247.—Strange, Phillips and Frere.—*Nagalinga Pillai v. Vaidelinga*

(a) Vide ante, page 147, Note (a.)

Pillai.—7th Nov. 1860.—M. S. U. Dec., 1860, p. 245.—Strange and Phillips.

25. A female has no right of inheritance to property conferred on her sister at her marriage.—*Tirmaliren Jolie Iyengar v. Appacooty Iyengar* alias *Vadaka Soondraraj-iengar and another*.—5th Sept. 1855.—*Id.*, 1855, p. 135.—Hooper, Morehead and Strange.

(7.) *Sister's Son.*

26. According to the law in force in the Madras Presidency, a sister's son does not inherit.—*Doe* on the demise of *Kullammal v. Kuppu*.—7th, 18th, 19th Nov. and 2nd Dec. 1862.—1, M. H. C. Rep., 85.—Scotland and Bittleston.

27. To the same effect are—*Ranee Parvata Vurdhany Nauchear v. Sevasawmy Taver*.—13th. November 1858.—M. S. U. Dec., 1858, p. 209.—Hooper and Strange.—and *Nagulinga Pillai v. Vaidelinga Pillai*.—7th Nov. 1860.—*Id.*, 1860, p. 245.—Strange and Phillips.

II. CAUSES OF EXCLUSION.

28. The moment a party becomes afflicted with leprosy, he loses his natural right of inheritance and the disqualification descends to his heirs thus adopted.—*Sevachetumbara Pillai v. Paruscuty*.—18th Nov. 1857.—M. S. U. Dec., 1857, p. 210.—Hooper, Baynes and Goodwyn.

29. It is only when leprosy assumes a virulent and aggravated type that it is regarded by Hindu law as a disqualification entailing forfeiture of inheritance. The rights of the party are not affected when attacked by it in a mild and simple form.—*Muttuvellayuda Pillai v. Paruscuty*.—31st Oct. 1860.—*Id.*, 1860, p. 239.—Phillips and Frere.

30. The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiocy is not necessarily utter mental darkness. A person of unsound mind, who has been so from birth, is in point of law an idiot. The reason of disqualifying a Hindu idiot is his unfitness for ordinary intercourse.—*Tirumamagol Ammaul v. Ramasvami Ayyengar and another*.—19th February 1863.—1, M. H. C. Rep., 214.—Strange and Holloway.

31. If a person steal goods belonging to a family estate, he forfeits, according to Hindu law, all share and interest

therein; but though such consequences might attach to crime or vice in a Hindu community governed by its own civil and criminal law, it cannot do so where, by another system of criminal law, other specific punishments are awarded to particular offences and to which such further penalty cannot be added.—*Choondoor Lutchmedavee alias Canacumma v. Narasimma*.—11th August 1858.—*Id.*, 1858.—M. S. U. Dec., 181.—Hooper, Strange and Baynes. •

III. CHARGES ON INHERITANCE—see DEBTOR AND CREDITOR.

MARRIAGE.^(a)

1. Reimbursement of the value advanced in the form of gifts to the father of the bride, cannot be claimed if the non-performance of the marriage contract be attributable to the dilatory conduct of the intended bridegroom.—*Divi Virajalingam v. Alaturte Rumanja*.—12th Dec. 1860.—M. S. U. Dec., 1860, p. 974.—Phillips and Frere.

2. A Sudra is competent to contract a Brahma marriage, i.e., without bestowal of a gift to the parents of the bride.—*S. Sasia Pillai v. Bagavan Pillai*.—16th Feb. 1859.—*Id.*, 1859, p. 44.—Strange, Hooper and Phillips.

3. The husband alone is bound to make provision for his wife during his lifetime.—*I. Subaroyadu v. J. Sashamma*.—13th Feb. 1856.—*Id.*, 1856, p. 22.—Hooper, Morehead and Strange.—*Rangaiyan v. Kaliyani Ammal*.—25th July 1860.—*Id.*, 1860, p. 86.—Frere and Bearechamp.—*T. Tiruwalagiri Satacharlu v. G. Tirumala Venkamma*.—16th Jan. 1861.—*Id.*, 1861, p. 12.—Strange and Phillips.

4. Maintenance was decreed to a wife who had quitted, of her own accord, her husband's protection upon his contracting a second marriage.—*S. R. R. Booshee Tummiah and another v. S. R. Vencata Neeladry Row*.—Case No. 2 of 1823.—1, Dec. of M. S. U., 366.—Ogilvie, Grant and Gowan.

5. A wife, separated from her husband, was held to have a right to claim maintenance from him, he not being

(a) Matters arising out of marriage contract have seldom formed the subject of litigation in the Madras Presidency, owing, probably, to the circumstance that such points are usually submitted for arbitration to the headman of the village or caste. The placita contained in Morley's Digest relate, with one exception, to the Bombay Presidency

able to substantiate the accusation against her character asserted in his pleadings.—*Oomatyushimker v. Bylee*.—18th Feb. 1823.—2, Borr., 440.—Roman.

6. An unchaste wife is not entitled to any maintenance.—*Ragabachary v. Sreeummah*.—18th May 1831.—2, Dec. of M. S. U., p. 20.—Lushington and Bird.

MAINTENANCE.

1. A claim for maintenance in arrears is unsustainable.—*Ramachendra Poy v. Luxoony Boyee*.—27th Nov. 1858.—M. S. U., 1858, p. 236.—Hooper, Strange and Baynes.

2. Maintenance will not be awarded when the defendant's property is inadequate to bear the charge.—*C. Ramakristnamah v. C. Soobbummah*.—23rd March 1857.—*Id.*, 1857, p. 82.—Hooper, Strange and Phillips.

3. Maintenance will not be awarded unless it be proved that the party is in possession of an income upon which it may be charged.—*Virabadrachari and others v. Kuppammal*.—7th Dec. 1859.—*Id.*, 1859, p. 265.—Strange, Phillips and Frere.

4. The amount of maintenance will be calculated with reference to the relative situation of the parties and the means of the party making the allowance.—*Zemindar of Calastray v. Durmurla Bungaroo Ammal*.—Case No. 13 of 1817.—1, Dec. of M. S. U., 170.—Scott, Greenway and Thackeray.

Of Widows.

5. A Hindu leaves all his property to his sons by will and a partition is effected among them according to the terms of the will. The Court will grant maintenance to his widow after the partition, and direct each of the sharers to contribute.—*Comulmoney Dossee v. Rammanath Bysack*.—30th March 1843.—1, Fulton, 189.

6. The widow of a previous proprietor (the brother of the last) is only entitled to maintenance, and the senior widow of the latter to the sole enjoyment of the estate.—*S. Soodamany Tadya Talaver v. Tungama Nauchear*.—14th Aug. 1837.—2, Dec. of M. S. U., 40.—Bird and Campbell.

7. A brother's widow is only entitled to separate maintenance out of ancestral property.—*B. Krishnaiyar v. B.*

Venkamma.—17th Dec. 1859.—M. S. U. Dec., 1859, p. 272, —Strange, Frere and Beauchamp.

8. A widow has a right to maintenance out of the property of her deceased husband's son by another wife.—*Ex parte Janaky Ummal*.—6th Dec. 1814.—2, Str., 285.

9. A widow is entitled to demand an allowance in money for her separate maintenance.—*T. Rumalutchmy alias Canakumma v. T. Teroomalanoyadoo and others*.—2nd Jan. 1849.—M. S. U. Dec., 1849, p. 1.—Hooper and Morehead.

10. The widow of a member of a joint family destitute of paternal property, is entitled to be supported by the parceners so long only as she lives in their house and under their care.—*M. Vencatakristniiah Puntooloo and others v. M. Venkatarutnamah*.—2nd January 1849.—*Id.*, 5.—Thompson and Morehead.

11. A widow afflicted with blindness is disqualified from inheriting her husband's estate; but his heir is bound to maintain her and clothe her during her life in a respectable manner.—*Dace v. Poorshotun Gopal*.—12th March 1817.—1, Borr., 411.—Elphinston and Sutherland.

12. A separate maintenance will not be awarded where the party sued has merely a floating and uncertain income.—*B. Krishnaiyar v. B. Venkamma*.—17th Dec. 1859.—M. S. U. Dec., 1859, p. 272.—Strange, Frere and Beauchamp.

13. A mother, notwithstanding that she has quitted her son's protection without adequate cause, is entitled to look to him for an allowance.—*Darmulla Bungaroo Ammal v. The Zemindar of Calastry*.—Case No. 13 of 1817.—1, Dec. of M. S. U., 170.—Scott, Greenway and Thackeray.

14. A widow of a deceased Hindu succeeding to his property is bound to maintain, according to her means, the widow of her adopted son who died first.—*Thuku Bhaee Bhide v. Rama Bhaee Bhide*.—13th July 1819.—2, Borr., 446.—Elphinston and Romer.

15. But the daughter-in-law subsequently adopting a son without interference of the mother-in-law, such son succeeds to his adoptive grandfather's property, and becomes liable for his adoptive mother's maintenance instead of her mother-in-law.—*Ramajee Huree Bhide v. Thuku Bace Bhide*.—15th Jan. 1824.—*Id.*, 443.—Romer, Sutherland and Ironside.

16. The widow of a son who died before his father was held to be entitled to maintenance only.—*Rai Sham Bullubh v. Prankisheer Ghose*.—4th July 1820.—3, S. D. A. Rep., 33.—Goad.

17. On partition of property amongst sons after the decease of their father, it was held that they were each liable for a share of the maintenance of their father's widow.—*Comulmoney Dossee v. Rammanath Bysack*.—30th March 1843.—1, Fulton, 189.

18. The support of a widow by her parents is optional. Should they refuse, her husband's heirs are bound to maintain her even though she had not arrived to maturity at the time of her husband's death.—*Ramien v. Condummal and another*.—11th Sept. 1858.—M. S. U. Dec., 1858, p. 154.—Strange and Baynes.

19. A Hindu widow has no claim upon her step-grandson, or step-grandson's widow, for maintenance, while she has a step-son living, who alone is bound to maintain her even though the others are in joint possession with him of her late husband's estate.—*Kishnanaud Chowdree v. Mt. Rookunec Dilia*.—14th Feb. 1821.—3, S. D. A. Rep., 70.—Leycester.

20. If a widow have received the share allotted to her in a Mrit Patra, the son is not obliged to maintain her. However if a stipulation to that effect be made in the deed, he must provide her with maintenance.—*Same v. Same*.—*Gun Ioshee Malkondkur v. Sugoona Bacc*.—2nd Feb. 1823.—2, Borr., 401.—Romen, Sutherland and Ironside.

21. A Hindu widow will not be entitled to arrears of maintenance if she have been guilty of delay in the prosecution of her suit, and her maintenance will be calculated from the date of the decree.—*Comulmoney Dossee v. Rammanath Bysack*.—30th March 1843.—1, Fulton, 189.

22. A widow was held to be entitled to apply to her father-in-law for food and raiment and expenses of pilgrimage according to his means and he cannot refuse, but she is not entitled to take the dowry from him, without sufficient cause, until she have attained the age of 30 years.—*Ichha Lykshumee v. Anundran Govindram*.—21st Feb. 1814.—1, Borr., 114.—Nepeau, Brown and Elphinston.

Of Wives.—See MARRIAGE.

Of other relations.

23. Maintenance cannot be withheld by a father from his son, merely on the ground of separation or disobedience, if he (the son) have no other means of subsistence. But the Court held that where there is no cause or an inadequate cause for the separation, the principles of equity required that the separate allowance should be reduced to the lowest scale; it should scarcely exceed what is barely necessary for the support of the party claiming it.—*Sree Cheytama Anmuga Deo v. Pursuram Deo*.—Case No. 2 of 182.—1, Dec. of M. S. U., 275.—Harris and Græme.

24. In cases where there appears no solid ground for the separation, the separate allowance to an inferior member of the family should be reduced to the lowest scale.—*Id.*

25. An illegitimate son of a Rajput, or any of the three superior tribes by a woman of the Sudra or other inferior class, is entitled to maintenance only.—*Pershad Singh v. Ranee Mulestree*.—17th Dec. 1821.—3, S. D. A. Rep., 132.—Goad and Dorin.

26. A Hindu dying and leaving a widow and daughter by a former marriage, the widow takes the estate, but the daughter has a claim on the estate for maintenance and residence during her step-mother's life.—*Gunga v. Jeevee*.—18th Nov. 1811.—1, Borr., 314.—Crow and Day.

27. A grandmother succeeding to her grandson must maintain her daughter-in-law (the son's widow).—*Sree Mootthu Jesmoney Dossee v. Attaram Ghose*.—10th Dec. 1823.—Macn. Cons. of Hd. law, 64.

See INHERITANCE.

MANAGER.

1. According to local usages of Malabar and the law of Maroomakatayam, the management of family property is vested in the senior male of the family, for the support and maintenance of the junior members thereof, and partition cannot be demanded by the latter.—*Anon.*—Case No. 21 of 1814.—1, Dec. of M. S. U., 118.—Scott and Greenway.

2. But where the senior male had avowed his incapacity to the management, and the second manager had not shown

that attention which it was incumbent upon him to show to the other junior members, the Court vested the junior members with a joint share in the future management.—*Id.*

MORTGAGE AND CONDITIONAL SALE.

1. One of two part owners of a valuable diamond mortgaged by the other without his concurrence or privity, recovered his share of it with costs from the mortgagee.—*Shewn Dos v. Bishenath Dohee*.—10th Feb. 1806.—1, S. D. A. Rep., 126.—Harrington and Fombelle.

2. Where a house was sold by the owners to A after redemption of it from a mortgagee who had re-mortgaged it to B: it was held that the owners, on the receipt of an acquittance from the mortgagee, were at liberty to sell the house; and that the claim of the under-mortgagee for remuneration did not lie against the owners, but against the mortgagee from whom he derived his title.—*Parannath Bhanoodutt v. Lukmeeram Aditram*.—12th June 1821.—2, Borr., 103.—Sutherland.

3. Where A, in consideration of a loan, mortgaged to B certain lands, which, under a judgment previously obtained against the estate of A's father, were liable to be sold in satisfaction of a debt due to C; it was held that such mortgage was invalid and could not prevail against the claim of C, whether B, the mortgagee, did or did not know of such previous judgment; and though it appeared that the mortgage by A was made for the purpose of defeating the claim of C under the judgment, that such attempt at fraud would not be allowed to succeed in favor of B, the mortgagee, whether B were or were not privy to the fraud.—*Teloonaoola Aroonachellum Chetti and another v. Palagherry Vencatachelliah*.—Case No. 8 of 1825.—1, Dec. of M. S. U., 513.—Grant, Cochrane and Oliver.

4. Cases, arising between Hindu parties upon mortgages of lands in the Mofussil, are to be governed by Hindu law, even where the form of conveyance is English.—*Rajah Burrodicaunt Roy and others v. Bisnosoondery Dobee and others*.—10th May 1836.—Mor., 91.

5. Although by the Hindu code, a mortgage or pledge unaccompanied by possession confers no title, yet by long established custom, by reference to the maxim that while the *lex loci contractus* governs the substances of the contract and its essential forms, the *lex fori* applies as to the forms of remedies and their consequences, a Bengali mortgage although

unaccompanied by possession gives a lien upon land.—*Sibchunder Ghose v. Russick Chunder Neoghy*.—July 1842.—1, Fulton, 36.—(Grant, J., dissent.)

6. All mortgages are ordinarily redeemable after any lapse of time, and it is not requisite that power to redeem should be kept open by specific deed.—*Ramiayar and another v. Meenatchy Iyen and others*.—9th April 1856, M. S. U. Dec., 1856, p. 58.—Anderson and Strange.

7. An otti, like a kanam, mortgage cannot be redeemed before the lapse of 12 years from its date.—*Kurnini Ama v. Parkam Kolusheri*.—21st March 1863.—1, M. H. C. Rep., 261.—Strange and Frere.—See also *Edathil Itti and others v. Kopashon Nayar*.—15th Dec. 1862.—*Id.*, 122.—Scotland and Strange.

8. Where a janmi made an otti mortgage and more than 12 years after made a second otti mortgage to a stranger without having given notice to the first mortgagee so as to admit of the exercise of their option to advance the further sum required by the janmi. Held, that the second mortgagee could not redeem the lands comprised in the first mortgage.—*Ali Husain and others v. Nillakandan Nambudiri*.—8th June 1863.—*Id.*, 356.—Scotland and Frere.

9. An usufructory mortgagee in Malabar must be allowed the option of purchasing the title before the purchaser can convey it to a third person.—*Kuni Taruvelyi v. C. Pualiakal Achal Amma and others*.—8th September 1859.—M. S. U. Dec., 1859, p. 169.—Hooper, Strange and Phillips.

10. In 1841, A established her proprietary right to lands as against B and an otti mortgage then in possession. In 1844, B obtained a decree against the mortgagee in a suit to which A was not a party and assigned his rights under the mortgage to C, who continued to hold as B's assignee down to 1860. Held, that unless A was aware, or might by ordinary diligence have been aware, of the suit of 1844, his right to redeem the lands was not barred by the lapse of 12 years from the decree in that suit.—*Pudiyakovilayalla v. Allunannalatta Kadinni*.—15th January 1863.—1, M. H. C. Rep., 146.—Strange and Frere.

11. Tender of redemption of mortgaged land renders mortgagee liable for rent on default of restoration of property from the date of such tender : mortgagor not bound to

deposit redemption money with a third party.—*Anunta Mullen v. Vyliagothoo Mama*.—2nd Dec. 1857.—M. S. U. Dec., 1857, p. 213.—Hooper, Baynes and Goodwyn.

12. During the continuance of a first otti mortgage, the janmi is in the same position as regards his right to make a second otti mortgage to a stranger after, as he was before, the lapse of 12 years from the date of the first mortgage.—*Ali Husain and others v. Nillakonden Nambudiri*.—8th June 1863.—1, M. H. C. Rep., 356.—Scotland and Frere.

13. A karanavan singly may make an otti mortgage.—*Edathil Itti and others v. Kopashon Nayar*.—15th Dec. 1862.—*Id.*, 122.—Scotland and Strange.

14. A kanam mortgagee does not forfeit his right to hold for 12 years from the date of the kanam by allowing the porapad to fall into arrear.—*Ihaik Rautan v. Kadangot Shupan*.—11th Dec. 1862.—*Id.*, 122.—Strange and Frere.

15. An otti differs from a kanam mortgage, first in respect of the right of pre-emption which the otti holder possesses; secondly, in being for so large a sum that practically the janmi's right is merely to receive a pepper-corn rent.—*Kuznini Ama v. Parkam Kolusheri*.—21st March 1863.—*Id.*, 261.—Strange and Frere.

16. In a suit instituted by a widow to remove an attachment placed on a house, in execution of a decree under a mortgage against her nephew, she urging that her husband and his brother assigned it to her by a prior mortgage, then unredeemable by lapse of time; it was held by the law officers that the prior mortgage was to be preferred; but as the circumstances attending the mortgage to the widow were suspicious, the Court decided in favor of the second mortgagee.—*Rulyal v. Yalook Johannes and another*.—15th Nov. 1820.—I, Borr., 301.—Hon. M. Elphinstone, Bell and Prendergast.

17. When land was doubly mortgaged, in the first instance, to A, again to B, under two bonds at different times, the second with a condition of sale after five months without redemption and possession vesting in B; it was held, under the authority both of the Hindu and Mahommadan law, that a mortgage is completed by possession; and that a mortgage of late date, supported by occupation, annulled a prior one unaccompanied by possession.—*Tooljaram Atmaram v. Meean Mookummud and another*.—31st July 1821.—*Id.*, 130.—Elphinston.

18. If from the evidence, admissions or circumstances, there should be reason to conclude that all the members of an undivided family were privy and consenting to the acts of its head or the mortgagee or purchaser not privy to the state and circumstances of the family from which the conveyance may have been obtained, the sale or mortgage will be held binding against all the members of the family.—*Sdsachella v. Venkatacholla and others*.—21st February 1816.—2, Str., 219.

19. When A claimed to recover from B a third share of an hereditary house, which he asserted had been unlawfully mortgaged to B by the son of his elder brother; B pleaded the validity of the mortgage bond and 16 years' possession; it was held on evidence that the mortgage bond was valid though passed not in the name of B, but in that of another person: and as it appeared to have been *bond fide* by the family, and as by the Hindu law one member of a family cannot sue for his share of an undivided estate, that A could only recover the whole property by redemption of the whole mortgage, the subsequent adjustment of the particular share between the members of the family resting with themselves; and A was non-suited with costs.—*Dewakur Josee v. Naroo Keshoo Goreh*.—8th February 1839.—*Sol. Rep.*, 190.—Pyne, Greenhill and LeGeyt.

20. It was declared that a younger brother is competent to mortgage an undivided estate without the consent of the elder brother, and a claim under a mortgage bond so passed cannot be sustained.—*Semble*, That in cases of great necessity, such as extreme distress, the younger brother may mortgage without the elder's consent; but that in liquidation of a debt contracted during the life of their father, and during the time they live as an undivided family, the share considered as that of the younger, would go to the mortgagee, although possessed by the elder brother.—*Balljee Bappoojee Hurbareh v. Venkappa Newada*.—12th Sept. 1839.—*Id.*, 216.—Giberne, Pyne and Greenhill.

PARTITION.

1. Ancestral property is liable to partition on the demand of any of the co-parceners.—*Vencata Subbamah v. Venkummal*.—Case No. 12 of 1818.—1, Dec. of M. S. U., 210.—Scott and Greenlaw.

2. A grandson may, irrespective of all circumstances, maintain a suit against his father for compulsory division of ancestral family property.—*Nagalinga Mudali v. Subbera-many Mudali*.—24th Nov. 1862.—1, M. H. C. Rep., 77.—Scotland and Bittleston.

3. The law of maroomakatayam admits not of a division of family property, but vests the management thereof in the senior male members.—Case No. 28 of 1814.—1, Dec. of M. S. U., 118.—Scott and Greenway.

4. Under the maroomakatayam rules, the division of family property cannot be enforced if opposed by other members of the family.—*Ranee Vurmah Rajah v. Cherrikul Chenga Kovilgottu*.—8th July 1857.—M. S. U. Dec., 1857, p. 120.—Morehead and Goodwyn.

5. A minor can sue for division only on the ground of malversation or danger to his interest while the property is in the hands of a managing member.—*Velayuda Gajundan v. Kuppanum*.—7th Dec. 1859.—*Id.*, 1859, p. 263.—Strange, Phillips and Frere.—See also *Swamiyar Pillai v. Chokkalingum Pillai* and *vice versa*.—1, M. H. C. Rep., 105.—Strange and Frere.

6. So also in the case of a mother: she takes only a life-interest.—*Gurupesaul Bose v. Seruchunder Bose and others*.—9th Dec. 1820.—Macn. Cons. Hd. law, 29, 72.

7. The right of a minor to share in a division must be reckoned from the completion of the 16th year, but where there is a guardian such right may be computed before that period.—Case No. 7 of 1814.—1, Dec. of M. S. U., 85.—Scott, Greenway and Stratton.

8. To entitle parceners to a share in property admitted to have been acquired by the exertions of particular members of the family, it must be proved that those members received aid from the paternal estate.—*Calutty Pillai v. Yella Pillai and another*.—Case No. 2 of 1817.—*Id.*, 148.—Scott, Greenway and Ogilvie.

9. And that there was an equality in the degree of labor or funds supplied by one or more of them in making the acquisition.—*Mt. Doorputtu v. Haradhum Sircar and others*.—20th February 1821.—3, S. D. A. Rep., 74.—Goad and Dorin.

10. But where unequal means and labor are contributed, the brother who contributed most to the acquisition should, by usage, receive a larger share.—*Krippa Sindhu Patjoshe and others v. Kanhaya Acharya and others*.—31st Dec. 1833.—5, S. D. A. Rep., 335.—Braddon and Halhed.

11. A double share is given to the member by whose exertions the acquisition is made.—*Guruchurn Doss and others v. Goluckmoney Dossee*.—14th March 1843.—1, Fulton, 165.

12. To sustain a claim to a share of a deceased brother's property, it being admitted that there was no inheritance from the father, the claimant must show that the property in question was acquired by the joint labors and exertions of the deceased and himself.—*Ranee Savugamy Nachiar v. Zemindar of Ramnad*.—Case No. 1 of 1814.—1, M. S. U. Decs., 101.—Scott, Greenway and Stratton.

13. The mere fact of a party having lived conjointly with a family into which his aunt had married gives him no right to a share in the family property in the absence of any express agreement to that effect.—*Y. Vencata Reddi v. G. Subba Reddi*.—6th November 1858.—M. S. U. Dec., 1858, p. 204.—Hooper, Strange and Baynes.

14. To render an unequal distribution of ancestral property amongst his sons by a father void, the distribution must be effected during the lifetime of the father with the consent of the sons, and separate and independent possession of the shares must be at once assumed by the several sharers.—*Muttuvengudachellasawmy Manigar v. Tumbaya-sawmy Manigar and others*.—23rd July 1849.—*Id.*, 1849, p. 27.—Thompson and Morehead.

15. The division of property with reference to wives (*Putneebagum*) is not recognized in Southern India.—*Id.*

16. A widow is not entitled to a share in the property which remained undivided at the death of her husband, but only to maintenance.—*Y. Seetamah v. Y. Kamatchumma*.—14th November 1855.—*Id.*, 1855, p. 198.—Hooper, Morehead and Strange.

17. A will showing a wish on the part of the testator that his sons should enjoy his estate jointly, is no bar to a suit for partition of the estate after his death.—*Rajah Sooranany Vencatapetty Rao v. Rajah Sooranany Ramachendra Rao*.—24th April 1828.—1, Dec. of M. S. U., 495.—Grant, Cochrane and Oliver.

18. Land granted for the maintenance of the rank and dignity of a family is exempted from partition, but if the members subsequently divide they may respectively enjoy the annual produce in such proportions as they may be found legally entitled to.—*Viswanadha Naik and others v. Bungaroo Teroomala Naik*.—28th July 1851.—M. S. U. Dec., 1851, p. 87.—Hobber and Morehead.

19. While the members of a Hindu family enjoy in common undivided property, money expended in its improvement or repair is considered as spent on behalf of all the members alike, and all have the benefit of the outlay when a division takes place.—*Muttusoomi Gaundan and another v. Subbivamaniya Gaundan and another*.—30th March 1863.—I, M. H. C. Rep., p. 309.—Scotland and Frere.

20. The sole manager of the joint stock of a Hindu family, supposing that joint stock to be augmented by his sole exertions, is not entitled to a double share of the amount of the augmentation for his trouble.—*Guruchurn Doss and others v. Golukmoney Dossee*.—14th March 1843.—1, Fulton, 165.

21. The acquisition of a distinct property by a member of a joint family, without the aid of the joint funds or of joint labor, gives a separate right and creates a separate estate.—*Ib*.

22. The union with the joint fund of that which might otherwise have been held in severalty, gives it the character of a joint and not of a separate property.—*Id*.

23. The possession of certain lands appertaining to a joint estate, in lieu of an annual dividend of the profits of the estate left under the management of one or more sharers is sufficient to maintain a right of partition in the joint estate when required.—*Ranee Bhuwan Debeh and another v. Ranee Surujmunee*.—12th May 1806.—1, S. D. A. Rep., 135.—*Putabharain and another v. Opindurnaraen and another*.—15th Jan. 1808.—1, S. D. A. Rep., 225.—Harrington and Fombelle.

24. Where property had been bequeathed for the maintenance of an idol by the descendants of the testator, it was ordered that in case of a quarrel amongst the descendants and a partition, that the family idols should be enjoyed by them alternately, that the time of the enjoyment was to be ascertained according to the proportions of the estate, which were left by the ancestor to the several descendants; and that everything given by the ancestor to the idol should accompany the pos-

session of it.—*Nobkissen Mitter v. Hurrischumder Mitter and another*.—11th Oct. 1819.—Macn. Cons. Hd. Law, 323.

25. When the mother and the widow of a Brahmin divided between them his property, consisting of *Dowuttees* land and the right of officiating in a temple, reserving to each the power of alienating her own share; it was held that such partition was invalid by the Hindu law in consequence of the incompetency of the parties, and a sale executed by the mother on the strength of it was set aside.—*Mt. Joganunnee Dibia and another v. Fukeer Chunder Chukurbutty*.—25th March 1829.—4, S. D. A. Rep., 337.—Turnbull.

26. Where one of four brothers sued, as a member of the united family, for his share of the profits of a firm composed of one brother's son and certain Mahomnadan parties, it was held that he was entitled to such share on the concurrent authority of the custom of the country and Hindu law, that all the members of an undivided family share all profits equally. The other parceners, however, were decreed to retain their shares untouched, as they could not be supposed necessarily informed either of the laws or customs of another religion so as to make these binding upon them.—*Jaceram Sarungdher v. Lukshmun Sarungdher*.—27th Feb. 1821.—2, Borr., 2.—Romer.

27. The mere execution of a deed of division does not alter the status of an undivided family unless actual possession of the shares has been taken by the shareholders under the terms of the deed.—*Naggappa Nynair v. Mudundee Swora Nyair*.—23rd Ap. 1853.—M. S. U. Dec., 1853, p. 125.—Morehead and Strange.—See also *Subba Naiken v. Taugaparoomal Pillay*.—26th Jan. 1859.—*Id.*, p. 11.—Hooper, Strange and Phillips: and *Kuppaummaul v. Panchanadaiyam*.—3rd Dec. 1859.—*Id.*, p. 260.—Strange, Phillips and Frere.

28. A partition, *in fact*, is as binding as a partition by agreement.—*Deo dem Gocul Chunder Mitter v. Tanachurn Mitter*.—27th January 1843.—1, Fulton, 132.

29. Where a division of family property had taken place in which for 19 years a party had acquiesced, it was presumed that he consented to the share allotted to him, though under the Hindu law he was entitled to a larger share.—*Linga Mulloo Pitchama v. Linga Mulloo Gomppah*.—23rd March 1859.—M. S. U. Dec., 1859, p. 84.—Hooper, Strange and Phillips.

PRE-EMPTION.

1. Held where the right of pre-emption among Hindus is recognized on the ground of local custom, the rules and restrictions of the Mahommadan law are applicable to claims of that nature.—*Mewa Sal and others v. Sooltan Sing and others*.—25th July 1843.—7, S. D. A. Rep., 129.—Rattray, Tucker and Barlow.

2. The right of pre-emption does not exist under the Hindu law as current in Southern India.—*Kristinen v. Sendalingara Oodiar*.—3rd Dec. 1849.—M. S. U. Dec., 1849, p. 125.—Hooper.

PROPERTY.

(1) *Ancestral.*

1. A Hindu having male issue cannot alienate any of the ancestral property.—*Tandavaroya Gaunden v. Tandavaroya Gaundan*.—12th Feb. 1859.—M. S. U. Dec., 1859, p. 40.—Hooper, Strange and Phillips.

2. Land acquired by means of ancestral property cannot be alienated by an undivided member of a joint family.—*Padru Prabhu v. Domingo Prabhu*.—28th Jan. 1860.—*Id.*, 1860, p. 8.—Strange, Frere and Beauchamp.

3. Persons in the position of managing members and guardians may jointly sell part of the ancestral estate to provide for the necessities of the family.—*Ramiah and another v. Kantaya and others*.—7th Sep. 1859.—*Id.*, 1859, p. 142.—Morehead, Hooper and Strange.

4. An undivided member of a Hindu family cannot sell a portion of the ancestral estate unless driven thereto by pressing necessity.—*Ramakuttu Aigar v. Kulatturaviyan*.—11th December 1859.—*Id.*, 1859, p. 270.—Strange, Frere and Beauchamp.—See also *Rama Pillai and others v. Sreerungum Pillai and others*.—25th April 1860.—*Id.*, 1860, p. 49.—Hooper and Beauchamp.

5. The sale of property by an undivided member is not valid, even if falling within the limits of his individual share unless made under emergent circumstances and with reservation of the shares of his sons and a sufficiency for the maintenance of his wife and daughters.—*Kanakasbhairya Pillai v. Seshuchalu Sastri*.—8th Feb. 1860.—*Id.*, p. 17.—Hooper,

Strange and Beauchamp.—See also *Sundra Pillai v. Tegaraja Pillai*.—7th July 1860.—*Id.*, p. 67.—Frere and Beauchamp.

6. A father is not competent to alienate his immovable property, whether ancestral or self-acquired, to the prejudice of his sons, except under urgent necessity.—*Muttumaren v. Lakshmi*.—24th October 1860.—*Id.*, p. 227.—Strange and Frere.

7. Land acquired by any member of a family governed by the law of Marmakootayam becomes the joint property of all the members.—*Muricuncheri Kuni Ahamad and others v. Chundungopoyilavullu and others*.—5th November 1859.—*Id.*, 1859, p. 226.—Hooper, Strange and Phillips.

8. According to Malabar law, a sale of family property is valid when made with the assent, express or implied, of all the members of the tarawad, and when the deed of sale is signed by the Karnavan and the senior anandravan if *sui juris*.—*Kondi Menon v. Sranginreagatta Ahammada*.—5th Nov. 1862.—1, M. H. C. Rep., 248.—Frere and Holloway.—See also *Kaipreta Ramen v. Mukkaiyil Mutoren and others*.—13th June 1863.—*Id.*, 359.—Phillips and Holloway.

9. An alienation of a portion of a Zemindari by the Zemindar in favor of his sister cannot operate independently of her claim to maintenance so as to bind his successor.—*Malavaraya Nayanar v. Oppaji Ammal*.—11th May 1863.—*Id.*, 349.—Scotland and Holloway.

10. A member of an undivided family can purchase property from his co-parceners provided they all join in the transaction.—*S. Venkatsubbaia v. Venkatramaiya*.—17th Oct. 1860.—M. S. U. Dec., 1860, p. 212.—Strange, Phillips and Frere.

11. Members of an undivided family may advance self-acquired funds for improvement of ancestral property subject to re-payment.—*Muttuswami Gaundan and another v. Subbiramaniya Gaundan and another*.—30th March 1863.—1, M. H. C. Rep., 309.—Scotland and Frere.

(2) *Self-acquired.*

12. Inheritance of real property does not render the subsequent accumulation of real and personal property liable to be considered ancestral property.—*Meenatchee Chetumba Setti*.—3rd Mar. 1863.—*Id.*, p. 61.—Morehead and Strañge.

13. Inam land restored, after resumption, to one member of a family, held to be the self-acquisition of that member.—*Kristniah v. R. Panakaloo and others*.—12th November 1849.—M. S. U. Dec., 1849, p. 107.—Hooper.

(3) *Stridhana*.

14. A wife or widow may alienate her stridhana, whether it be moveable or immoveable, with the exception perhaps of land given to her by her husband.—*Doe* on the demise of *Kullammal v. Kuppu Pillai*.—7th, 18th, 19th Nov. and 2nd Dec. 1862.—1, M. H. C. Rep., 85.—Scotland and Bittleston.

15. A man cannot, except under certain circumstances, dispose of his wife's jewels given or received in dowry.—*Gottamukkula Ycterazumma v. G. Ramasamygaru Vencatacharloo*.—5th Nov. 1853.—*Id.*, 1853, p. 254.—Morehead and Strange.

16. The wife is entitled to recover the value of such of her property as may have been appropriated in redeeming the family lands.—*Id.*

(4) *Alienation by Widow*—See WIDOW.

MORTGAGE—SALE, &c.

SALE AND PURCHASE.

1. The sale of a piece of land by a member of a divided family on which the maintenance of his widow is chargeable is not valid if there be no other property belonging to his share.—*Lachcharna v. Bapanaumma*.—27th Oct. 1860.—M. S. U. Dec., 1860, p. 230.—Strange and Frere.

2. The sale of land held to be invalid in the absence of any writing in proof of the same.—*Nunjummal v. Yochummal*.—15th October 1856.—*Id.*, 1856, p. 150.—Anderson, Goodwyn and Harris.

3. The title of the prior purchaser prevails although possession has not been actually delivered.—*Villayuda Mudali v. Sevarama Sastri*.—15th Dec. 1860.—*Id.*, 1860, p. 277.—Phillips and Frere, (Strange, dissent on the ground that the title of the second purchaser being accompanied by possession, must, if *bona fide* without notice, be held valid.)

4. A bought land from B in 1848, entered into possession, and in 1852 went abroad. In 1853, C purchased the same land from B, the land being then registered in B's name and C not having notice of A's purchase, held in a suit

brought in 1859; that A. could not eject C.—*Chindambara Nayinar v. Annappa Naylkan*.—11th November 1862.—1, M. H. C. Rep., 62.—Strange and Phillips.

5. If a Hindu sell his father's land in his absence and while living and heard of, such sale is void *ab initio*, and the son may recover it against his own conveyance, even after his father's actual death or presumed death from absence for twelve years unheard of. But the purchaser has his remedy by action against the son for the purchase-money, and the ruling power will direct the money to be refunded in whatever manner it deems most equitable.—*Doe dem Gungana-rain Bonnerjee v. Bulram Bonnerjee*.—East's Notes, case 85.

6. But the sale of the land by the son for the necessary support of the family would be binding on him as much as though the father had made it.—*Id.*

7. Exchange of lands followed by possession need not be evidenced by writing.—*Mantina Rayaparaj v. Chekuri Venkataraj*.—5th December 1862.—1, M. H. C. Rep., 100.—Scotland and Phillips.

See PROPERTY—WIDOW, &c.

WIDOW.

1. A widow has a life interest only in her husband's landed estate, and therefore any alienation of it by her is invalid and void.—*S. V. Jagganadha Rauze v. S. V. Boochee Seetiah*.—Case No. 5 of 1824.—1, Dec. of S. U., p. 453.—Cochrane and Oliver.

2. A widow cannot alienate immoveable property, but with the consent of her heirs.—*Ramabutter and another v. Mootoosamy Pillai*.—20th January 1856.—M. S. U. Dec., 1856, p. 14.—Hooper, Morehead and Strange.

3. A widow, although entitled to unreserved possession of her deceased husband's moveable property and a life interest in his hereditary landed property, cannot alienate the latter either by gift or sale except with the consent of the heirs or from want of means to perform her husband's funeral ceremonies.—*Ramasakien v. Akylandummal*.—22nd Nov. 1849.—1849, p. 115.—Hooper and Thompson.

4. A widow is competent to sell her deceased husband's landed property when such alienation is necessary to meet her husband's funeral charges and debts and her own main-

tenance.—*Subbarayan v. Akhilandammal and others.*—8th February 1860.—*Id.*, 1860, p. 15.—Morehead, Strange and Beauchamp.

5. Alienation by a widow of her deceased husband's property is allowed by the Hindu law, when such is rendered requisite for the payment of debts or for her necessary subsistence.—*Chocalinga Karamoondan v. Muthaisiroyen and another.*—22nd February 1853.—*Id.*, 1853, p. 45.—Hooper and Morehead.

6. A widow in a divided family has no power to alienate the immoveable property inherited by her from her husband, except a small portion thereof for religious purposes alone, but she has absolute authority over the personal or immoveable property to consume or dispose of it at her pleasure.—*Gopaulu Putter and another v. Narraina Putter and others.*—28th Sept. 1850.—*Id.*, 1850, p. 74.—Hooper and Morehead.

7. A sale by a Hindu widow of land inherited by her from her husband is valid only when made of necessity and for certain purposes; but on this point where the plaintiff in a suit, to set aside such a sale, has relied, in the Court below, solely on the ground that the land had been devised inconsistently with the exercise of the widow's power of sale, the Appellate Court will be satisfied with evidence less complete and positive than would otherwise have been required.—*Rangaswami Ayyangar v. Vanjulatummal and others.*—18th Oct. 1862.—1, M. H. C. Rep., 28.—Phillips and Frere.

8. A widow cannot during her life constitute by deed any person other than the legal heir successor.—*S. V. Jugganada Rauze v. S. V. Booshee Seetiah.*—Case No. 5 of 1824.—1, Dec. of M. S. U., 453.—Cochrane and Oliver.

WILLS.

1. A man is allowed to dispose by will of property which he could have alienated during his lifetime by any other instrument.—*M. V. Vurdiah and another v. M. Lutchmiah.*—Case No. 3 of 1824.—1, Dec. of M. S. U., p. 438.—Grant, Cochrane and Gowan.

2. The will of a Hindu has no validity or effect whatever except so far as it may be consistent with Hindu law.—*Rajah S. Venkatapetty Rao v. Rajah S. Ramachendra Rao.*—24th April 1828.—*Id.*, p. 495.—Grant, Cochrane and Oliver.

3. A testamentary writing can confer no right of succession in opposition to established law or to the immemorial usages of the country or family of the party executing it.—*M. K. Rama Wurma Rajah v. M. K. Rama Wurma Rajah and another.*—16th Nov. 1826.—1, Dec. of M. S. U., 509.—Grant, Cochrane and Oliver.

4. A will can only take effect so far as it is in accordance with Hindu law.—*V. Seshachala Nayak v. Tuyam-mal.*—11th Aug. 1860.—Decs. M. S. U., 1860, p. 111.—Frere and Beauchamp.

5. A will cannot create a title in a Hindu family.—*Kasale Arumugam v. Palaniayi and another.*—19th Nov. 1859.—*Id.*, 1859, p. 246.—Strange, Phillips and Frere.

6. The property devised to him by the will of his adopted father was decreed to an adopted son.—*Arnachel-lum Pillai v. Iyasawmy Pillai.*—Case No. 5 of 1817, 154.—Scot.—1, Dec. of M. S. U.—Greenway and Ogilvie.

7. A father cannot by will divest his son of the right of succession to an estate granted him by Government expressly in lieu of former privileges which had manifestly descended to him from his ancestors.—*C. C. Prusunna Venkatachella Reddiar v. C. C. Moodoo Venkatachella Reddiar.*—Case No. 7 of 1823.—*Id.*, 406.—Cochrane and Gowan.

8. A bequest does not amount to an alienation of property so as to deprive the heirs of their right of inheritance.—*C. Seirvagaren v. Iyah Mudali alias Videalinga Mudali and others.*—9th February 1859.—M. S. U. Decs., 1859, p. 35.—Hooper, Strange and Phillips.

9. A widow cannot be excluded by will bequeathing the bulk of the property to a person of a different family.—*Tullapragadah Pairammah v. C. Soobarajadoo and another.*—14th January 1845.—2, Dec. of M. S. U., 79.—Dickinson.

10. Effect cannot be given to a will under the law of Maroomakatayam; but property in the absolute control of the giver may be alienated by gift, to constitute which, however, possession must have been conferred.—*Polycondy Mucky v. V. Poodoovachary Coonjamud and others.*—27th February 1856.—M. S. U. Dec., 1856, p. 26.—Hooper and Strange.

11. The Hindu law in Madras admits of the testamentary disposition of property, whether ancestral or self-acquired,

and the testamentary power of a Hindu is co-extensive with his independent right of alienation *inter vivos*.^(a)—*Vallinayagam Pillai v. Pachche and others*.—2nd Feb. and 27th Ap. 1863.—1, M. H. C. Rep., p. 326.—Scotland and Holloway.

12. *„Semble*, that a Hindu's will would not be invalidated merely by its omitting to provide for his widow.—*Id.*

13. A Hindu can dispose of all his property, moveable and immoveable, and as well ancestral as otherwise.—*Nagatlutchmy Unmal v. Nadarajah Chetti and others*.—27th Nov. 1851.—M. S. U. Decs., 1851, p. 226.—Thompson.

14. A Hindu can make no will to the prejudice of his heirs, viz., his widows.—*Virakumara Seevai and others v. Gopalu Seevai*.—13th Nov. 1861.—*Id.*, 1861, p. 147.—Strange and Frere.

(a) The question of testamentary power is fully gone into in this case.

INDEX.

A.

Page.

ABSENCE in a distant country	114,178,196
<i>Achara Canda</i> , on religious ceremonies	pref. x.
Acquisition, separate	203
Act of God, or of the King	272,274,287
Acts valid, though prohibited... ..	9,11,251
of parcners, how far binding on each other.	189
Adoption, motives to	62,70,80,83,116,118
not compulsory, on part of the adopter	65
not claimable, on part of the adopted	72
its essentials... ..	82,85
right of	66
successive and contemporaneous.	67
by a wife... ..	<i>ib.</i>
by a widow	68
by a mother	69
by a woman in her own right	<i>ib.</i>
by Sudras... ..	68,73,80
by one incapable of inheriting	66
On the part of the natural parent—	
motive to... ..	70
right of giving	<i>ib.</i>
relation, and qualities of the adopted	71,72,73
of an eldest, or only son... ..	74
of a married one	80
initiatory ceremonies	77
<i>Dwyamushyayana</i> , or son to both fathers.	75,89,90
<i>Nitya</i> and <i>Anitya</i> , special adoptions	89
for life only	<i>ib.</i>
intended only	84
agreement for, unexecuted	<i>ib.</i>
need not be in writing	82
nor needs a widow authority to adopt	69
its effect, as to the adopted	86,90
indefeasibleness of	77,90
<i>Crita</i> , or purchased son	91
among other nations	92

	<i>Page.</i>
Adultery	23,41,42,125,162
Ages of the world, (<i>yuga</i>)	pref. xi.
Agreements. See Contracts.	
Agnatic succession	136
Alienation, restrictions upon	6
by a single man	13
by a married one	5,6,119,215,252
by a wife	14
by a widow	235
by a mother	133
by parceners... ..	189
Ancestral property	4,184
Ancestral land recovered	4,207
Anchoret	176
<i>Anitya</i> , a special adoption	90
Apostacy, a cause of slavery	103
excludes from inheritance	154
Ascetics, excluded from inheriting	139
descent from	<i>ib.</i>
<i>Arsha</i> marriage	30
<i>Asura</i> marriage	30,31
<i>AUM</i>	81
<i>Aurasa</i> , legitimate son born	64
<i>Ayangadees</i> , village officers	4

B.

Bailment, contract of	270
Bastard. See Illegitimate.	
Betrothment	24
Blindness, excluding from inheritance... ..	141
Blood, whole and half	133,135,137,224
<i>Brama</i> marriage	30
Brahmins, learned, &c.	137
minority of	60
means of livelihood	53
property of, not escheatable	138
priestly ones	302
Brothers, their right of inheritance	133
right of raising up issue to one another,	
obsolete	27,28
eldest	182,189

C.

	<i>Page.</i>
<i>Calī yuga</i> , the fourth, or present age... ..	pref. xi.
<i>Candas</i> , sections of books	<i>ib.</i>
Caste, appropriate occupations for	4,294,301
degradation from	150,151,174.
in marriage	27
in adoption	71
in slavery	103
Ceremonies, initiatory, and regenerating	27,77,80
not liable to be deemed superstitious	260
Chastity, of wife. See <i>Adultery</i> .	
of widow	234
Cheating	299
<i>Chelas</i> , heirs to devotees	139
<i>Chsetraya</i>	27
<i>Chudavarana</i> , or tonsure... ..	78
Class. See <i>Caste</i> .	
Commission, or mandate ; (Bailment)	276
Common stock, improved or augmented..	214
Concealment of effects on partition	221
Conicopoly of a village, his dues partible	199
Contracts, general principles relative to	263
who disabled from entering into... ..	<i>ib.</i>
consideration of... ..	266
by the wife and others, on behalf of head of the family, absent, or under disability	268
need not be in writing	269
of marriage	262
bailment	270
loan	288
exchange	294
sale	<i>ib.</i>
debt	299
Consent, by a girl to marry	36,77
by a boy to be adopted..	77,84,85
of boy to be sold	53
Conveyance, requisites of	7
Co-parcenary. See <i>Parcenars, and Partition</i> .	
criteria of	216
policy of... ..	327
Cord, investiture of... ..	78
Corrody... ..	5,199
Crown. See <i>Regalities</i> .	

	Page.
Criminal conversation	34
<i>Crita</i> , or purchased son	91
<i>Crita yuga</i> , the first age of the world	pref. xi.
Custom, or usage	pref. xvi, 231, 241, 247, 256

D.

<i>Daiva</i> marriage	30
<i>Dattaca</i> , son given in adoption	64
<i>Dattaca Chandrica</i> , a law book... ..	pref. xii.
<i>Dattaca Mimansa</i> , a law book	<i>ib.</i>
<i>Dattu Homam</i>	85
Daughters, on partition by the father	180
their right to inherit	126
power over property inherited by	129
descent from	128
<i>Daya Bhaga of Jimuta Vahana</i> , a law book	pref. xii.
<i>Daya Crama Sangraha</i> , a law book... ..	<i>ib.</i>
Deafness, excluding from inheritance	141
Death, civil... ..	175
presumed	120, 156, 178
Debt, contract of	299
a charge on the inheritance... ..	156
on partition by a father'	181
by co-parceners	190, 213
modes of recovery	300
limitation of	<i>ib.</i>
Deductions, on partition	182, 198
Degradation, from caste	174
mode, and effect of	150, 151
<i>De minimis non curat lex</i>	204
Deposits, (Bailment)	272
Devotee	175
<i>Dharma Sastra</i> , body of law	pref. xiii.
<i>Dherna</i> , mode of recovering a debt	300
Dissipation of property	148, 214
Division. See <i>Partition</i> .	
Divorce	40
Domestic authority	236
Drone, in undivided family	169, 210, 214
Dumb, excluded from inheritance	142
<i>Dvāpara yuga</i> , the third age... ..	pref. xi.
<i>Dwyamushyayana</i> , or son to two fathers... ..	75, 89

E.

	<i>Page.</i>
Earnest	295
Elder brother. See <i>Brothers.</i>	
Elder wife	44
Embargo	296
Endowments, religious... ..	141
Escheat, for want of heirs... ..	138
Evidence	302
Exchange, contract of	294
Excommunication... ..	151
Expiation	77,151,175

F.

Fairs	296
False claim, or defence	301
Family	5,50,189
head of, his power over property of	51
over his issue	53
Father. See <i>Family.</i>	
Female, unmarried, descent of property of	141
Food and raiment only allowed to the unchaste wife... ..	33
to the unchaste widow.	162
to the outcaste... ..	164
Force and fraud... ..	101,192
Funeral obsequies. See <i>Obsequies.</i>	

G.

Gains, by science	208
by valour... ..	<i>ib.</i>
Gaming, whether a cause of disherison... ..	147
debt for... ..	157
Gandharva marriage	30,57
Gauda	131
Gaya, pilgrimage to... ..	67,149
Gifts. See <i>Conveyance.</i>	
revocable	159
friendly one, binding on heirs	<i>ib.</i>
Gifts, or presents, how far par tible	205
God, act of. See <i>Act.</i>	
Gosains, devotees	139
Gotra... ..	89

Page.

Grandfather, and Great-grandfather. See <i>Inheritance</i> .	
Grandmother, and Great-grandmother. See <i>Inheritance</i> .	
Grandmother, entitled to maintenance	162
Grandsons take <i>per stirpes</i>	197
how they claim... ..	<i>ib.</i>
<i>Grihasta</i> , married man, or housekeeper	23, 232
Guardian, appointment of, to minors... ..	59
to widows	234

H.

Half-blood. See *Blood*.

Heir	113
apparent and presumptive	121
a minor... ..	122
Hermit	139, 176
excluded from inheriting... ..	139
descent of property from	<i>ib.</i>
Hindu, religious duties of	217
belief in transmigration	145
attached to his laws... ..	lxiv, 306
difficulty of ascertaining them	115, 305
deeds and instruments	212
cohabiting with a Mahomedan woman	152
courts	pref. xv, 313
Hiring (Bailment)	284
<i>Homam</i> . See <i>Datta Homam</i> .	
House, built on another's land	286
Housekeeper. See <i>Grihasta</i> .	
Husband and wife, their reciprocal duties	32
subtraction of conjugal rights	36
separation between	34, 179
supercession of wife	40
continues to reside with him	42
his power over property inherited	
by her	129
Hypocrites	155

I.

Idiot, excluded from inheriting	142
Idols, on partition... ..	198
Illegitimate issue, on partition by the father.	177
entitled, among Sudras, to inherit... ..	57
———, with their mothers to main- tenance	59, 163

	<i>Page.</i>
Impostors	155
Impotence	35,143
Infants. See <i>Minors</i> .	
Inheritance, grounds of	117,156
when it vests	111
its indefeasibleness	119
does not in general vest in females	135
except in Malabar	141
descent of	112
ascent of	129
failing natural kin	137
of lands endowed for religious uses	140
of kingdoms, or regalities	188,198
of Zemindaries	188
of offices	199
causes of exclusion from	142
charges on	156
to property of unmarried females	141
of dancing girls	<i>ib.</i>
of prostitutes	<i>ib.</i>
Initiation	160
Interest of money	288
stops on a tender	291
Issue, male, its extent	67,113
its importance	62,65

J.

Jaghires	200
Jagannatha Tercapunchanana	pref. xiv
Jimuta Vahana	pref. xii, 310
Jobrai	188
Judicature, charges of	301

K.

King. See <i>Act</i> .	
universal guardian	59,234
ultimate heir	138
his prerogative, as to markets	
fairs	
weights	
measures	
pre-emption	
embargo	
	296
Kinsmen and relations	213

	<i>Page.</i>
Lameness, a cause of exclusion from inheritance...	142
Land, importance attached to it...	2
Legitimacy ...	142
Lepers ...	146
Limitation of actions ...	21,300
Litigation ...	45,250
Loan, contract of ...	288
Lunatic, excluded from inheriting ...	142

M.

<i>Madhavya</i> , a law book ...	pref. xiii, xv
Mahomedan penal law...	lvii
Maintenance of a family, by the head ..	55
by parceners, of the widow ...	161
of other dependant members ...	163
of persons excluded from inheriting	164
how to be provided for on partition ...	161
land, the proper fund for it...	2,6
Male issue. See <i>Issue</i> .	
Manager of undivided family...	189
Mandate, or commission, (Bailment)...	276
Manumission of slave, form of ...	107
Market overt ...	296
Marriage, its expiatory influence ...	23
the only rite competent to females and Sudras	23, 160
conditions of ...	27
forms of ...	30
ceremony of...	25, 32
impediments to ...	25
breach of promise of ...	<i>ib.</i>
a charge on the inheritance ...	163
incompetent effect of...	149, 155
Master of family, authority of, preserved ...	45
Metempsychosis ...	145
Minors, subject to guardianship ...	59
when it ceases...	60
when bound, by acts done for them ...	8
on partition by the father ...	178
<i>Mitacshara</i> , a law book ...	pref. xii, 310
<i>Mithila</i> ...	258
<i>Mohunts</i> , devotees ...	140

	<i>Page.</i>
Mortgage	281
Mother, inheriting to her son	132
restricted from aliening	133
descent from	<i>ib.</i>
Mullicks, case of	257
Mutual trusts, (Bailments)... ..	280

N.

<i>Natra</i> , marriages	40
Natives, treatment of... ..	lxv.
Nephew, preferable in adoption	73,75
Niece, not inheritable on account of her son	136
<i>Nitya</i> and <i>Anitya</i> , special adoptions... ..	89
Nobkissen Raja, case of	85
Nuddea, case of	254

O.

Obsequies, performance of, ground of inheritance,	116,156
by a son, importance of	62
by the widow... ..	44,65,124
by daughters	127
by sons of daughters	132
by parents	<i>ib.</i>
by brothers	133
by nephews... ..	134
by grand-nephews	135
may be performed by a substitute	138
provision for performance of	160
incompetency for, the ground of exclusion from inheritance	142
Offices, inheritable, and partible... ..	200
Ordeal	221,292
Ornaments, and cloths, on partition	201
Out-caste... ..	150,175

P.

Pagodas, offices attached to... ..	200
<i>Paisacha</i> marriage	30
<i>Pancháyeti</i>	313
<i>Phrasara Smriti</i> , a law book	pref. xii.

	<i>Page.</i>
Parceners, how far bound by each other's acts...	189
waste by...	148, 196, 214
unproductive one	187, 214
separated, re-union of	181
Parent and child, reciprocal duties of	34
Parsees	lvii.
Partition, by the father—	
when, and under what circumstances it takes	
place	111, 168
how	180
of what	168
how far it may be partial	184
the son's shares	<i>ib.</i>
the father's...	186
after-born sons	172
the wife's interest in it	178
the daughter's.....	180
deductions on, obsolete	182
of things indivisible	186
debts to be provided for, on	181
distinction between the industrious and a drone.	187
resumption of	186
among co-parceners:—	
claimable by parceners only	194
may be during life of the mother	<i>ib.</i>
where minors	196
absentees	<i>ib.</i>
grandsons	197
the widow pregnant	<i>ib.</i>
may be waived by any one	<i>ib.</i>
of things impartible	198
of things belonging specially to the deceased...	202
separate acquisitions...	203
of things specially divisible	211
of things lost and recovered	207, 210
where the contribution has been unequal	214
where there has been none...	187, 210, 214
must be equal	213
preliminaries to	<i>ib.</i>
need not be in writing	212
instrument of	<i>ib.</i>
mode of	<i>ib.</i>
proof of a disputed one	215
how far binding	203

	<i>Page.</i>
Partition, of effects subsequently recovered... ..	221
where there has been a concealment.	<i>ib.</i>
of residue undivided... ..	223
supplemental one	<i>ib.</i>
re-union of parceners	<i>ib.</i>
re-partition... ..	224, 225
by the Athenian law, &c.	225
<i>Patni-bhaga</i> , or partition through widows, or mothers.	195
Penance... ..	146
Perjury, pious	303
Personal good qualities	130, 183
property, descendible	5, 115
acquired	8
Pleading	302
Pledges, (Bailment)	280
Polygamy... ..	40
Possession, its force	20
<i>Prajapatya</i> marriage	30
Precedency, among wives of same husband	43
Pre-emption	296
Prescription	284
Presents. See <i>Gifts</i> .	
bridal ones... ..	25
to a wife, on supercession	41
<i>Prayaschi Canda</i> : on expiation	pref. xi.
Primogeniture... ..	122, 174, 183
Property, a trust... ..	4, 6
different kinds of	5
real, and personal alike descendible... ..	<i>ib.</i>
in the soil	1, 2
distinctions, with reference to the owner of it.	6, 252
to the nature of it, whether	
ancestral, or acquired	<i>ib.</i>
on partition by the father	184
among co-parceners	213
separately acquired... ..	5, 203
acquired through the patrimony or aid of	
co-parceners	184, 203
modes of acquiring	205
lost and recovered	5, 185, 207, 210
of religious institutions	20
of <i>jura regalia</i>	<i>ib.</i>
limitation respecting	22, 301
<i>Punsavana</i> , ceremony, for birth of a boy... ..	65

	<i>Page.</i>
Purchase and sale	294
adoption by	91
<i>Purohita</i> , the family priest	83
<i>Put</i> ; region of horror after death	62
<i>Putreshti</i> , sacrifice to fire... ..	80
<i>Puttra Bhaga</i> , partition by sons... ..	195

R.

<i>Racshasa</i> marriage	30
<i>Rajchashi</i> (Zemindar), case of	69
Real and personal property	4
Reason, to prevail, in determining a doubtful meaning... ..	132, 274
Recovery of family property, that had been lost. See <i>Property lost and recovered.</i>	
Regalities... ..	20,198
Regeneration	27
Relations and kinsmen	213
Religion, with reference to judicature... ..	82
Religious endowments	20,140
duties	217
Re-partition... ..	223
Representation... ..	113,177
limits of... ..	135,159,196,223
Rescission of contracts	270,298
Residue, on partition, undivided	223
Retraction of gifts	270
Re-union of divided parceners	223

S.

Sacrifice to fire (<i>putreshti</i>)	80
Sale	294
<i>Sanyasi</i> , a devotee	139,176
<i>Saraswati Vilasa</i> ; a law book	pref. x, xiv.
Science, gains by, how partible	205
Schools of law	307
where they differ, 5,9,12,19,28,33,38,68,111,113,119, 132,136,147,157,159,174,187,191,208,224,238,256,268	

	<i>Page.</i>
Separate acquisition of property	203
Separation, between man and wife.....	35,179
Sisters, marriage of	171
do not inherit	134
maintainable, and marriageable out of the com-	
mon stock	163
married ones not a charge	<i>ib.</i>
Sister's son	136
Slavery	54,96
Abolition of	96
Slave, saving his master's life	105
Slaves, real property	4
Slave girls, on partition	201
<i>Smriti</i> , law	pref. xii, 307
<i>Smriti Chandrica</i> , a law book	pref. xii, xiv.
Sons, importance of.....	62,65
different sorts of	63,91
by different mothers	173
make but one heir	113
eldest one.....	73,182,189
with reference to the paternal relation	54
their interest in the family property	4,8,12,167,177
their right to property acquired by them.....	51
partition by their father.....	169,174,185
deductions in favor of particular ones, obsolete,	182
their right of inheritance	119
their liability for their father's debts	157,181
after-born ones	172,181
Spirituous liquors, debt for	157
<i>Srotryum</i> , beneficial tenure of land	199
<i>Sruti</i> , revealed law	307
Stages of life.....	23,175
Stepmother, oppression by	170
does not inherit, as such	183
is entitled to be maintained	162
<i>Stridhana</i> , woman's peculiar property	14
to be accounted for, on partition.....	161
descent of	238
Student	23,60,139,175
Suicide	146,231
Sudras, excluded from ceremonies, marriage excepted.....	23
form for marriage of, the <i>Asura</i>	30
can adopt, with texts from <i>Puranas</i>	80,85
adopted, and after-born, how they share.....	88

	<i>Page.</i>
Sudras, illegitimate inherits	57,121,155
may divide by <i>Patni-bhāga</i>	195
minority of, when it ceases	60
disregard of, by the law,—instances of, ..	27—29,56, 58,73,85,88,107,289
Supercession. See <i>Husband and Wife</i> . ..	
Sureties... ..	292
Suttee. See <i>Widow</i> .	

T.

Testamentary power	245,259
Theology, professed students of	139
Title	20
Titles lost by neglect	284
Tonsure, (<i>Chudavarana</i>)	78
Transmigration	146
Treasure found, partible	246
Tribe. See <i>Caste</i> .	
<i>Trita, yuga</i> ; second age of the world... ..	pref. xiii.

U.

Undivided family... ..	189
property... ..	<i>ib.</i>
improved, or augmented	203
residue of, remaining after partition	223
Usage, or custom, force of	pref. xxiii, 130,241,247,256
<i>Upanayana</i> , ceremony of investiture	78

V.

Valour, gains by, on partition... ..	209
<i>Vanaprastu</i> . See <i>Hermit</i> .	
Vice, a cause of disherison	146
<i>Vijnyaneswara</i> , author of the <i>Mitacshara</i> , quod vide.	
Village officers	4
Virgin... ..	31
widow	25,232
<i>Vyavahara Canda</i> , on law	pref. vii.

W.

ard. See *Guardian*.

Waste. See *Parceners*.

Weights and measures	296
Widow, obsequies by	65, 124.
her right of inheritance	110, 113, 123, 224
to maintenance	161
her power of adopting	68
of giving in adoption	71
her power over her property	126, 235
descent of her ornaments, on partition	201
property	236
subject to guardianship, and restraint...	234
pregnant, at the time of partition	197
a childless one	127
a virtuous one	235
where several, rank among	126
partition among	195
not allowed to marry again	35, 232
though a virgin widow	25, 232
but may burn	227
re-marriage of, legalized	244
never to live apart from relations	235
her Stridhana, succession to	19
rights of, on re-marriage	244
Wife. See <i>Adultery, and Adoption</i> .	
a blameless one	34, 42, 123
marital power, over her person	33, 36
over her property	37
husband's power of supercession, in favor of	
another	40
where more than one, rank among	43
an elder one	ib.
her right of property...	14, 37, 52
her ornaments	38, 201
her power of contracting	268
her right of inheritance...	123
where the husband dies in co-parcenary.	110, 123, 124
descent of her property	39
never to live apart from her husband, or his	
relations	234, 235

Wills. See *Testamentary power*.

	<i>Page.</i>
Witnesses	lvii, 212, 303
Woman's property. See <i>Stridhāna</i> .	
Writings not in general necessary	69, 82, 212, 269
Wrong, legal and moral, distinction between. See <i>Acts</i> .	
Y.	
<i>Yuga</i> , age of the world	pref. xi.
Z.	
Zemindaries, decent of	188

